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# TRANSCRIPT OF RECORD

## Supreme Court of the United States

OCTOBER TERM, ~~1929~~ 1930

No. ~~581~~ 32

ANNA URAVIC, AS ADMINISTRATRIX OF THE GOODS, CHATTELS, AND CREDITS WHICH WERE OF ANTON URAVIC, DECEASED, PETITIONER,

*vs.*

F. JARKA COMPANY, INC., AND UNITED AMERICAN LINE, INC.

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ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

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**PETITION FOR CERTIORARI FILED JANUARY 18, 1930**

**CERTIORARI GRANTED MARCH 3, 1930**

**(34,712)**

# (34,712)

# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1929

# No. 581

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 20, 1930

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# Court of Appeals

OF THE STATE OF NEW YORK. 1

ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, Deceased,

Plaintiff-Appellant,

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

Defendants-Respondents.

2

## Statement Under Rule 234.

This case comes up for review by this Court, pursuant to leave granted by the Appellate Division, Second Department, by order dated April 8, 1929. The order of affirmance was entered on or about February 15, 1929, and the judgment of affirmance was entered thereon on the 7th day of March, 1929.

The above entitled action was commenced by the service of a summons and complaint on both defendants on the 1st day of November, 1926. 3

The answer of the defendant, F. Jarka Co., Inc., was served on the 10th day of December, 1926.

On the 4th day of March, 1927, a stipulation was entered into between counsel for the plaintiff and counsel for the defendant, F. Jarka Co., Inc., wherein paragraph "Second" of the complaint was amended to read that "F. Jarka Co., Inc., was a foreign corporation instead of, as originally alleged, a domestic corporation".

*Statement Under Rule 234.*

4 The answer of the defendant United American Line, Inc., a general denial, was served on the 9th day of December, 1926.

The cause of action as to the defendant United American Line, Inc., was subsequently discontinued.

The plaintiff's attorney is Frederick R. Graves, Esq., who was substituted as attorney for the plaintiff, in place and stead of Stapleton & Friedman, Esqs., by an order of the Hon. Lewis L. Fawcett, Justice, dated May 5th, 1927.

The attorneys for defendant, F. Jarka Co., Inc.,
5 are Almy, Van Gordon & Evans, Esqs.

There has been no change of parties herein.

This action was tried before the Hon. Justice William B. Carswell and a jury on the 30th day of March, 1927, at which time the complaint was dismissed.

The plaintiff's notice of appeal was served on the 6th day of May, 1927.

6

## Notice of Appeal.

SUPREME COURT,

KINGS COUNTY.

ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, Deceased,

Plaintiff,

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

Defendants.

*Sirs*:

PLEASE TAKE NOTICE that the plaintiff Anna Uravic, as Administratrix of the goods, chattels and credits which were of Anton Uravic, deceased, hereby appeals to the Appellate Division of the Supreme Court for the 2nd Department at the next term thereof from the judgment of this Court entered herein and filed in the office of the Clerk of the County of Kings on the 7th day of April, 1927, whereby it is adjudged that the complaint of the plaintiff herein be dismissed upon the merits and that the defendant F. Jarka Company, Inc., recover from the plaintiff Anna Uravic, as Administratrix of the goods, chattels and credits which were of Anton Uravic, deceased, the sum of $144; and from the order entered herein and filed in the office of the Clerk of the County of Kings on the 7th day of April, 1927, dismissing the complaint herein and said

10 plaintiff Anna Uravic, as Administratrix of the goods, chattels and credits which were of Anton Uravic, deceased, appeals from each and every part of said judgment and order as well as from the whole thereof and this appeal is taken both upon question of law and upon question of fact.

Dated, New York, N. Y., May 6th, 1927.

Yours, etc.,

FREDERICK R. GRAVES,
Attorney for Plaintiff,
11 Office & P. O. Address,
29 Broadway,
Borough of Manhattan,
City of New York.

To:
WILLIAM E. KELLY, Clerk.

ALMY, VAN GORDON & EVANS,
Attorneys for Defendants,
140 Nassau Street,
New York City.

12

## Summons.

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.]

*To the above named Defendants*:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, New York, October 28, 1926.

STAPLETON & FRIEDMAN,
Attorneys for Plaintiff,
Office and Post Office Address,
305 Broadway,
Borough of Manhattan,
City of New York.

## Complaint.

16

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.]

Plaintiff, by Stapleton & Friedman, her attorneys, complaining of the defendants, respectfully shows to this Court and alleges:

I. That heretofore and by an order and decree
17 duly made and entered in the Surrogate's Court of the County of Kings, Anna Uravic was duly appointed Administratrix of the goods, chattels and credits of Anton Uravic, the above named deceased, and that said Anna Uravic is duly qualified as such.

II. At all the times hereinafter mentioned, F. Jarka Company, Inc., was a domestic corporation, organized and existing under and by virtue of the Laws of the State of New York and having its principal office of business in New York City, State of New York.
18

III. At all the times hereinafter mentioned, F. Jarka Company, Inc., was engaged in the business of loading and unloading steamships and employed a number of men and used considerable material in the conduct of their business.

IV. At all the times hereinafter mentioned, the defendant, F. Jarka Company, Inc., had a con-

tract with the defendant United American Line, Inc., to do the work of unloading and loading the steamship "Hamburg" hereinafter referred to. 19

V. At all the times hereinafter mentioned, the defendant, United American Line, was a foreign corporation, organized and existing under and by virtue of the laws of the State of Delaware and having its principal office of business in the State of New York, in the Borough of Manhattan, City of New York.

VI. At all the times hereinafter mentioned, the United American Line, Inc., was engaged in the steamship business and owned and operated the steamship "Hamburg" hereinafter referred to. 20

VII. At all the times hereinafter mentioned, the Hudson River, at or near Pier 86, at the foot of West 46th Street, in the Borough of Manhattan, City of New York, was a navigable stream of water.

VIII. At all the times hereinafter mentioned, the steamship "Hamburg" was anchored in the Hudson River alongside of Pier 86. 21

IX. At all the times hereinafter mentioned, the deceased, Anton Uravic, was employed by the defendant, F. Jarka Company, Inc.

X. At all the times hereinafter mentioned, the deceased, Anton Uravic, was employed by the defendant, F. Jarka Company, Inc., on board the steamship "Hamburg" as a longshoreman.

22 XI. That on or about July 13th, 1926, while the deceased, Anton Uravic, was lawfully upon the steamship "Hamburg" and working for the defendant, F. Jarka Company, Inc., he was struck and knocked down by a draft, receiving serious injuries, whereby he died shortly thereafter from the effects of said injuries.

XII. That the aforementioned accident happened without any negligence on the part of Anton Uravic contributing thereto and wholly through the negligence of the defendants, their agents, servants and employees, in not furnishing a safe
23 and proper place to work; in not furnishing sufficient and adequate appliances; in not furnishing sufficient and competent help and on account of performing the work in a careless and negligent fashion and on account of the negligent, defective and broken condition of the steamship, together with its parts as a result of said accident, the deceased received injuries which caused his death.

XIII. That Anton Uravic died as a result of the aforesaid occurrence and injuries on the 13th day of July, 1926, intestate, and that here-
24 tofore and prior to the commencement of this action, letters of administration upon his estate were issued to Anna Uravic, his widow and next of kin, by the Surrogate of the County of Kings, and the said Anna Uravic was duly qualified as the aforesaid administratrix of the goods, chattels and credits of the said Anton Uravic, deceased, which accrued to him and is still acting as such.

XIV. That at the time of the decease of Anton Uravic, he was of the age of forty-five years and

Anna Uravic, adminstratrix herein, was his wife and entitled to his services, companionship, comfort, aid and support, and that the said Anton Uravic left surviving his wife, Anna Uravic, his son, John Uravic, and his daughter, Anna Uravic. 25

XV. That by reason of the premises and facts aforementioned, plaintiff has sustained damages in the sum of Fifty thousand ($50,000) Dollars.

WHEREFORE, plaintiff demands judgment against the defendants in the sum of Fifty thousand ($50,000) Dollars, besides the costs and disbursements of this action. 26

STAPLETON & FRIEDMAN,
Attorneys for Plaintiff,
305 Broadway,
Manhattan, New York City.

## Answer of Defendant F. Jarka Co., Inc.

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.] 27

The defendant F. Jarka Co., Inc., answering the complaint of the plaintiff herein, alleges upon information and belief:

First: It denies that it has any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs I, V, IX, X and XIV of said complaint, except that on the 13th day of July, 1926, it had in its employ one

28 known to it as Tony Uravic, engaged as a longshoreman on the S. S. "Hamburg".

Second: It denies the allegations contained in paragraphs II, IV, VI, XI, XII, XIII and XV of said complaint.

FOR A SECOND DEFENSE THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Third: That in so far as this action is brought to recover damages under the theory of the Common Law or in Admiralty, this answering defendant alleges that any injuries that may have been
29 sustained by the plaintiff's intestate resulting in his death, were sustained through his own carelessness and negligence, or that of a fellow servant or fellow servants, or that of some person, firm or corporation over whom this answering defendant had no control, and not by any negligence on the part of this answering defendant.

FOR A THIRD DEFENSE THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Fourth: That all the risks and dangers connected with the situation at the time and place
30 mentioned in the complaint, were necessary, open, obvious and apparent, and were known to and assumed by the plaintiff's intestate.

FOR A FOURTH, SEPARATE, DISTINCT AND COMPLETE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Fifth: That prior to the 13th day of July, 1926, this answering defendant secured compensation for its employees and continued to secure

such compensation pursuant to the provisions of 31
Section 50 of the Workmen's Compensation Law of the State of New York and the acts amendatory thereof and supplemental thereto, and had posted in a conspicuous place in and about the place where it was engaged in its business, a notice in the form prescribed by the State Industrial Board of the State of New York. At no time before the happening of the accident and the injury alleged to have been received by the plaintiff's intestate, did the plaintiff's intestate serve any notice in writing on this answering defendant of his election not to be bound by the 32
provisions of the said law in accordance with the statute in such case made and provided, and thereby this answering defendant as employer of the plaintiff's intestate, assumed liability for the payment of awards of compensation under the Workmen's Compensation Law of the State of New York. That by virtue of Section 113 of the Workmen's Compensation Law of the State of New York, the plaintiff's intestate and this answering defendant, elected to be bound by the provisions of the said Workmen's Compensation Law as the exclusive right and remedy of the plaintiff's intestate and his next of kin for the 33
injury and resultant death alleged to have been sustained, and therefore this Court has no jurisdiction of the subject matter herein or of this action.

FOR A FIFTH SEPARATE, DISTINCT AND COMPLETE DEFENSE THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Sixth: That in so far as the plaintiff seeks to recover on the theory of the so-called Jones

34 Act, being the Act of June 5, 1920, Chapter 250, Section 20, this answering defendant alleges that the complaint fails to state facts sufficient to constitute a cause of action, in that there is no allegation in the complaint that the vessel upon which the plaintiff's intestate was engaged as alleged in the complaint herein, and upon which the plaintiff claims that her intestate was injured, was a vessel of American registry or flying the American flag.

FOR A SIXTH SEPARATE, DISTINCT AND COMPLETE
35 DEFENSE THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Seventh: That the steamship "Hamburg" in connection with which the plaintiff claims that the said Anton Uravic, deceased, was injured, was a German vessel, registered under and by authority of the German Government and flying the German flag.

FOR A SEVENTH SEPARATE, DISTINCT AND COMPLETE DEFENSE THIS ANSWERING DEFENDANT ALLEGES
36 UPON INFORMATION AND BELIEF:

Eighth: This answering defendant reiterates and realleges the allegations contained in paragraph seventh with the same force and effect as though herein fully set forth.

Ninth: That the steamship "Hamburg" at all times mentioned in the complaint herein, was and still is a German vessel, and the alleged injury to the plaintiff's intestate and the alleged negli-

gent acts of this answering defendant, its agents, 37
servants and employees, took place on board a German steamship. By reason of these facts, the law applicable to the case is the Law of Germany. By the terms of the provisions of the Federal Insurance Ordinance of Germany, which is also known as the Workmen's Insurance Acts, which were initiated through the famous Imperial message of November 17, 1881, which Acts were later on uniformly codified by the so-called Federal Insurance Ordinance of Germany of July 19, 1911, and the acts amendatory thereof and supplemental thereto, particularly by the Act of July 19, 1923, 38
becoming effective August 9, 1923, and by the Act of July 14, 1925, becoming effective January 1, 1926. The heirs at law and next of kin of the plaintiff's intestate Anton Uravic, deceased, has the right to compensation for the death of the said Anton Uravic, from an accident arising out of and in the course of his employment not due to his wilful act, provided a claim thereto is put forward as required by the provisions of the said Federal Insurance Ordinance of Germany referred to; and by reason of this right, the plaintiff is barred by the laws of Germany, from maintaining this action. 39

FURTHER ANSWERING THE COMPLAINT AND AS A FURTHER SEPARATE, DISTINCT AND COMPLETE DEFENSE, THIS ANSWERING DEFENDANT ALLEGES UPON INFORMATION AND BELIEF:

Tenth: This answering defendant reiterates and realleges the allegations contained in paragraphs VII, VIII and IX herein contained, with

40 the same force and effect as though fully set forth herein.

Eleventh: That at all the times mentioned in the complaint herein, the steamship "Hamburg" was and still is a German vessel. By reason of his employment on board a German vessel, the plaintiff's intestate subjected himself to the laws of Germany, and any claim which his heirs at law and next of kin may have or which they may advance because of injuries received in the course of his employment on board a German vessel is
41 governed by the laws of Germany. By the terms and provisions of the Federal Insurance Ordinance of Germany, also known as the Workmen's Insurance Acts, which were initiated through the famous Imperial message of November 17, 1881, which Acts were later on uniformly codified by the so-called Federal Insurance Ordinance of Germany of July 19, 1911, and the acts amendatory thereof and supplemental thereto, particularly by the Act of July 19, 1923, becoming effective August 9, 1923, and by the Act of July 14, 1925, becoming effective January 1, 1926, the heirs at law and next of kin of the plaintiff's intestate
42 have the right to compensation for the death due to an accident arising out of and in the course of the plaintiff's intestate's employment, not due to his wilful act, provided said claim thereto is put forward as required by the provisions of the Federal Insurance Ordinance of Germany; and by reason of this right, the plaintiff is barred by the Laws of Germany, from maintaining this action.

Twelfth: That all the matters set forth in the

complaint relating to the management of a German vessel and in accordance with the provisions of the said Federal Insurance Ordinance of Germany above referred to, and International Comity, settlement of this matter should be left to the German Consul at the Port of New York. This answering defendant therefore requests that this Court do not take jurisdiction of this action. 43

WHEREFORE, this answering defendant demands judgment that the complaint herein be dismissed with costs.

ALMY, VAN GORDON & EVANS,
Attorneys for Defendant,
F. Jarka Co., Inc.,
Office & P. O. Address,
140 Nassau Street,
New York City. 44

---

## Answer of Defendant United American Line, Inc.

SUPREME COURT,

KINGS COUNTY. 45

[SAME TITLE.]

Defendant United American Line, Inc., by William B. Devoe, its attorney, for its answer to the complaint of the plaintiff herein, respectfully shows to the Court as follows:

First: This defendant has no knowledge or information sufficient to form a belief as to any

46 of the allegations contained in paragraphs I, VII, IX, X, XI, XIII, XIV and XV of the complaint.

Second: This defendant denies all of the allegations contained in paragraphs IV, VI and XII thereof.

FOR A SEPARATE AND COMPLETE DEFENSE:

Third: This defendant alleges, upon information and belief, that any injuries sustained by Anton Uravic at the time and place or on the occasion mentioned in the complaint were due
47 in whole or in part or were contributed to by the negligence and want of care of said Uravic and not by any negligence or want of care on the part of the defendant.

WHEREFORE, defendant demands judgment dismissing the complaint together with the costs and disbursements of this action.

WILLIAM B. DEVOE,
Attorney for Defendant,
United American Line, Inc.,
165 Broadway,
Manhattan,
New York City.

48

## Stipulation Amending Complaint.

49

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.]

It is hereby stipulated and consented that paragraph "II" of the complaint in the above entitled action be amended so that the same shall read as follows:

At all the times hereinafter mentioned, F. Jarka 50
Company, Inc., was a foreign corporation, organized and existing under and by virtue of the Laws of the State of Delaware, and having its principal office of business in New York City, State of New York; and it is further stipulated that the defendant, F. Jarka Company, Inc., for the purpose of the trial, will concede that the defendant F. Jarka Company, Inc., at all the times mentioned in the complaint was and still is a foreign corporation so organized and existing under and by virtue of the Laws of the State of Delaware.

51

Dated, New York, March 4th, 1927.

STAPLETON & FRIEDMAN,
Attorneys for Plaintiff.

ALMY, VAN GORDON & EVANS,
Attorneys for Defendant.

## Judgment.

52

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.]

The issues in this action having regularly come on for trial at Trial Term, Part 3, of this Court, held in the Kings County Court House, Borough of Brooklyn, City of New York, on the 29th and
53 30th days of March, 1927, before Hon. William B. Carswell, Justice and a jury, and the defendant, F. Jarka Co., Inc., having moved at the close of the plaintiff's case to dismiss the complaint, and the said motion having been granted by the Court upon the merits,

Now on motion of Almy, Van Gordon & Evans, attorneys for the defendant, F. Jarka Co., Inc., it is hereby

ADJUDGED AND DECREED that the complaint of the plaintiff herein be and the same is hereby dismissed upon the merits, and that the defendant,
54 F. Jarka Co., Inc., do recover from the plaintiff, Anna Uravic, as Administratrix of the goods, chattels and credits of Anton Uravic, deceased, the sum of One hundred forty-four ($144) Dollars costs and disbursements taxed herein, and that the said defendant have execution therefor.

Judgment signed and entered this 7th day of April, 1927.

WM. E. KELLY,
Clerk.

## Order Dismissing Complaint.

55

At a Trial Term, Part 3 of the Supreme Court, County of Kings, held in the Kings County Court House, Borough of Brooklyn, City of New York, on the 7th day of April, 1927.

Present—Hon. William B. Carswell, *Justice.*

[SAME TITLE.]

The issues in this action having regularly come 56
on for trial at Trial Term, Part 3 of this Court, held in the Kings County Court House, Borough of Brooklyn, City of New York, on the 29th and 30th days of March, 1927, before Hon. William B. Carswell, Justice and a jury, and plaintiff and defendant, F. Jarka Co., Inc., being represented by counsel upon said trial, and the plaintiff having introduced all her proof upon said trial, and at the close of the plaintiff's case the defendant, F. Jarka Co., Inc., having moved to dismiss the complaint herein, upon the ground that the plaintiff has failed to make out a cause of action against
said defendant, and after hearing Thomas J. 57
Brennan, Esq., of counsel for defendant, F. Jarka Co., Inc., in support of said motion, and Thomas J. Stapleton, Esq., of counsel for plaintiff in opposition thereto.

Now, on motion of Almy, Van Gordon & Evans,

58 attorneys for the defendant, F. Jarka Co., Inc., it is hereby

ORDERED that the said motion be and the same is hereby granted, and the complaint of the plaintiff is hereby dismissed upon the merits.

Enter

WM. B. CARSWELL,
J. S. C.

Granted April 7, 1927.

59 WILLIAM E. KELLY,
Clerk.

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## Order Substituting Attorneys.

At a Special Term, Part II of the Supreme Court of Kings County at the Courthouse thereof in the Borough of Brooklyn, State of New York, on the 5th day of May, 1927.

60 Present—HON. LEWIS L. FAWCETT, *Judge*.

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[SAME TITLE.]

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Upon the annexed stipulation of the attorney for the plaintiff, the plaintiff in person and the substituted attorney for the plaintiff herein, dated

and acknowledged as to the plaintiff on the 3rd day of May, 1927, it is 61

ORDERED that Frederick R. Graves, Esq., be and he hereby is substituted for the plaintiff herein in place and stead of Stapleton & Friedman, Esqrs.

Enter,

L. L. FAWCETT,
J. S. C.

---

## Consent. 62

SUPREME COURT,

KINGS COUNTY.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED by and between Stapleton & Friedman, formerly the attorneys for the plaintiff herein, the present attorney for the plaintiff herein, Frederick R. Graves of 29 Broadway, New York City, and Anna Uravic, that Frederick R. Graves be and he hereby is substituted for the plaintiff herein in the place and stead of Stapleton & Friedman the present attorneys for the plaintiff. 63

It is further stipulated that the present attorneys for the plaintiff, Stapleton & Friedman, expressly waive any and all liens on the plaintiff's cause of action.

*Consent.*

64 It is further stipulated that an order may be entered herein substituting Frederick R. Graves as attorney for the plaintiff in place and stead of Stapleton & Friedman without further notice.

STAPLETON & FRIEDMAN,
Attorneys for Plaintiff.

ANNA URAVIC,
Plaintiff in Person.

FREDERICK R. GRAVES,
Substituted Attorney.

65

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State of New York,
County of New York—ss.:

On the 3rd day of May, 1927, before me personally appeared ANNA URAVIC to me known and known to me to be the individual described therein and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.

NATHAN JELLING,
66 Notary Public.

## Extract from Clerk's Minutes. 64a

At a Trial Term of the Supreme Court of the State of New York held in and for Kings County, at the Court House in the Borough of Brooklyn, on the 29th and 30th days of March, 1927.

Present—Hon. William B. Carswell, *Justice*.

#27349

Stenographer Louis Zimmerman. 65a

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Anna Uravic, as Admr., etc., of Anton Uravic, deceased,

Plaintiff,

—against—

F. Jarka Company, Inc., and United American Line., Inc.,

Defendants.

66a

---

This cause having been called for trial in its order on the Calendar, and twelve trial Jurors having been duly drawn, empanelled and sworn to try the same, the counsel for the plaintiff moves to discontinue as to the defendant United American Line, Inc. Motion granted.

Upon the evidence at the close of plaintiff's case

*Extract from Clerk's Minutes.*

64b counsel for defendant moves to dismiss the complaint. Motion granted.

Thirty days' stay of execution after service of notice of entry of judgment and sixty days in which to make and serve a case on appeal granted to the plaintiff.

April 7, 1927. By Carswell, *J.*—Order signed granting motion dismissing complaint on its merits.

A true extract from the minutes.

65b

WILLIAM E. KELLY,
Clerk.

66b

## Case and Exceptions.

67

SUPREME COURT,

KINGS COUNTY.

TRIAL TERM—PART III.

[SAME TITLE.]

Brooklyn, N. Y., March 30, 1927.

Before—HON. WILLIAM B. CARSWELL, *Justice,* and a Jury.

68

APPEARANCES:

THOMAS J. STAPLETON, ESQ., for the Plaintiff.

THOMAS J. BRENNAN, ESQ., for the Defendant Jarka Company.

(A jury was duly empaneled and sworn.)

The Court: Who appears for the United American Line?

Mr. Stapleton: Only the stevedores are involved. This is the wrong defendant, the United American Line. 69

The Court: You discontinue as to them?

Mr. Stapleton: That was discontinued.

(Mr. Stapleton made an opening statement to the jury on behalf of the plaintiff.)

(Mr. Brennan made an opening statement to the jury on behalf of the defendant.)

70 The Court: Is this action under the Jones Act exclusively?

Mr. Stapleton: Under the Jones Act.

The Court: All right.

Mr. Brennan: Will counsel for the plaintiff concede that this ship was flying the German flag?

Mr. Stapleton: Yes.

Mr. Brennan: And will you also concede that the defendant Jarka Company was qualified as a self-insurer. I have the certificate here.

Mr. Stapleton: I do not see where that is material.

71 Mr. Brennan: Under the compensation law.

The Court: The compensation law does not apply here.

Mr. Brennan: It may become significant later on, sir. It may become important, I don't know.

The Court: Do you want to concede it? You may concede it even though it may not have any legal effect.

Mr. Stapleton: All right, I will concede that.

Now, under this stipulation, I move to amend paragraph two of the complaint to read: "At all the times hereinafter mentioned F. Jarka Company, Inc., was a foreign corporation organized
72 and existing under and by virtue of the laws of the State of Delaware and having its principal office of business in New York City, State of New York."

Mr. Brennan: No objection.

The Court: Motion is granted.

Mr. Stapleton: We might as well have also—well, it is conceded that is a fact, that it is a foreign corporation.

Mr. Brennan: Yes.

Mr. Stapleton: I understand Mr. Brennan also

will concede that the deceased, Anton Uravic, died in Saint Mark's Hospital on July 13, 1926, at about 11:55 A. M. as a result of the injuries received on that same day on board the steamship "Hamburg" in the accident involved in this case. 73

Mr. Brennan: That is conceded.

Mr. Stapleton: It is also conceded that Anton Uravic was a citizen of the United States having been so made on June 25, 1922.

---

ANNA URAVIC, 146 27th Street, Borough of Brooklyn, City of New York, the plaintiff, called as a witness on her own behalf, being first duly sworn, testified as follows: 74

Mr. Stapleton: It is also conceded that Anna Uravic was appointed administratrix of the goods, chattels and credits of Anton Uravic prior to the institution of this suit by due order made by Surrogate George Albert Wingate.

*Direct examination by Mr. Stapleton:*

Q. Where do you reside, Mrs. Uravic? Where do you live? A. 146 27th Street. 75

Q. You got to speak up so this gentleman can hear you. I could not hear you. A. 146 27th Street, Brooklyn.

Q. You got to do a little better than that, Mrs. Uravic. Where do you live? A. 146 27th Street, Brooklyn.

Q. Were you married to Anton Uravic? A. Yes.

76 Q. When were you married to him, how long ago? A. Twenty years.

Q. Twenty years ago? A. Yes.

Q. Where were you married? Where were you married? A. (No answer).

Q. In this country? A. No.

Mr. Brennan: We do not question that at all.

Q. How long have you been living in Brooklyn here? A. Thirteen years.

77 Q. And in the address that you have just given how long have you lived? A. Five years.

Q. Did you have any children? A. Two.

Q. What are their names? A. Anna.

Q. And what is the boy's name? A. John.

Q. How old is Anna? A. Twelve.

Q. What does Anna do? A. She went to school.

Q. She goes to school? A. Yes.

Q. What school does she go to? A. Public.

Q. What does John do? A. He worked in the factory.

Q. How old is John? A. Fifteen.

Q. On July 13, 1926, when your husband Anton
78 was killed, what did John do then, was he working then? A. No.

Q. Where was he going? A. That time vacation. Before he went to school.

Q. Well, did he work before your husband was killed? A. No.

Q. Well, what was he doing? Did he go to school? A. Yes.

Q. What school? A. High school.

Q. How many years had he gone to high school? A. Two.

Q. How old was your husband at the time he 79
was killed? A. Forty-five.

Q. What was the condition of his health before this accident? A. Very good.

Q. What kind of work did he do? A. Longshoreman.

Q. What other kind of work had he done previously? A. He work in the shipyard.

Q. Did he always have to do hard work? A. Yes.

Q. What kind of a house is it that you live in, private house? A. Yes.

Q. Do you own that house? A. Yes.

Q. When did you buy that house? A. 1921. 80

Q. Is that house in your name? A. Yes.

Q. Who gave you the money for that house?

Mr. Brennan: That is objected to as incompetent, irrelevant, and immaterial.

Mr. Stapleton: I will withdraw it then.

Q. Now, while your husband was working as a longshoreman what was his salary? A. Forty, forty-five, sometimes more.

Mr. Brennan: I do not hear her.

81

Q. Speak up a little louder. How much? A. Forty, forty-five, sometimes more.

Q. For how long before this accident was he a longshoreman? A. Nearly two years.

Q. Nearly two years? A. Nearly two years.

Q. Now, of that $45 did he give you any part of it or how much? A. All pay.

Q. He gave you all of it? A. Yes.

Q. And with that money that he gave you did you save any?

82 Mr. Brennan: That is objected to.
Mr. Stapleton: I withdraw it.

Q. What kind of a disposition did your husband have? A. I don't understand.

Q. What kind of a disposition did Mr. Uravic have? Was he a nice man or was he a brute? A. No, very nice.

Q. Did he stay home many nights? A. Every night.

Q. Did he associate with the children? A. (Witness nods her head.)

83 Q. What is the answer? A. I don't know what you say.

Q. Well, when he stayed home at nights before this accident what did he do? Tell us? A. He stayed with the family.

The Court: "He stayed with the family." Keep your voice up so that they can hear you.

Q. And did the children have lessons at night? A. Yes.

Q. And was he able to help them with the lessons? A. Sure.

84 Q. Did he talk to them? A. Yes.

Q. Did you go out to the theatre with him, to the moving pictures? A. Sometimes, yes.

Q. Did he go out with the children? A. Yes.

Q. Did you go to other places of entertainment? What is the answer? A. Yes.

Q. Did you have friends call at the house and entertain them? A. Many times.

Q. And did you visit with your husband and children? A. Sure.

Q. At other places? A. Yes. 85

Mr. Stapleton: I think that is all.
Mr. Brennan: No questions.

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ROMANO URADICH, 422 Degraw Street, Borough of Brooklyn, City of New York, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

*Direct examination by Mr. Stapleton:*

Q. Where do you live, Mr. Uradich? A. 422 86
Degraw Street, Brooklyn.

Q. Will you keep your voice up, Mr. Uradich, so these gentlemen can hear you? By whom are you employed at the present time? A. Present time? For the Brooklyn City Railroad, motorman.

Q. A motorman on the trolley line here in Brooklyn? A. Yes, sir.

Q. Now, on July 13, 1926, were you employed on the steamship "Hamburg"? A. Yes, sir.

Q. You were a member of a gang there, were you? A. Yes, sir. 87

Q. On hatch number two? A. Number two hatch, yes, sir.

Q. How many men were working in the gang? A. In my gang was working four men and the other gang four.

Q. Will you talk up? I could not hear that. A. Four men on deck.

Q. Four men on deck? A. In each gang.

Q. How long had you been working for the defendant Jarka? A. Going on four years.

88 Q. Four years? A. Yes, sir.

Q. As a longshoreman? A. Always as longshoreman, on deck.

Q. I wish you would talk up. I can't hear.

The Court: Stand up alongside there. Maybe your voice will come out better. Stand up alongside this rail.

Q. How many years have you been a longshoreman? A. Fourteen years.

Q. And have you worked around this port here? A. Always here, New York and Brooklyn.

89 Q. Always in New York and Brooklyn? A. Yes.

Q. For what companies have you worked? A. I used to work for the Porto Rico Line about five years; then I was foreman and stevedore on the Peninsular Line for a year and a half; then I was foreman for John T. Clark for eight months, and the rest of them I work always on deck as gangway man for eight years for Frank Jarka and other companies.

Q. And during the fourteen years are you familiar with the customs in loading and un-

90 loading all kinds of freight on the type of ship that the "Hamburg" is? A. Well, I handled any kind of freight.

Mr. Brennan: I do not hear you at all.

The Court: Yes or no. Are you familiar with the customs?

Q. Are you familiar with them? Do you know the customs of unloading and loading ships of that type? A. Yes, sir.

The Court: I do not think you should go into the customs until we get some facts. There may be customs that have no application and therefore we won't be concerned with them. 91

Q. When did you go to work on this ship "Hamburg"? A. Eight o'clock in the morning.

Q. Is that the first day you had worked on that ship? A. That is the first day we started to discharge. We make up the ship the day before.

Q. Were you there when Anton Uravic was hired also? A. Yes, sir. 92

Q. Were you all hired together? A. Yes, sir.

Q. Where was that? A. The day before, on the afternoon.

Q. Tuesday? A. At one o'clock, outside the dock.

Q. That is, outside Dock 86, North River? A. Yes, sir.

Q. Now, what was your position in the gang? A. I was the gangway man.

Q. What was Anton Uravic? A. He was a hooker-on, the fourth man——

The Court: Speak slower and keep your voice up. I am within five feet of you and I did not understand a word you said in these last two or three sentences you uttered. 93

Q. Anton Uravic was the fourth man in the gang? A. Yes, sir.

Q. What does that mean? A. He was hooker-on.

94 *By the Court:*

Q. He was what? A. Hooker-on. He was supposed to hook on the drafts.

The Court: Oh, hooker-on.

*By Mr. Stapleton:*

Q. Now, did you see this accident to Anton Uravic? A. Yes, sir.

Q. What kind of work was going on at the time? A. At the time the accident happened we were
95 hoisting up heavy lifts from number two hatch.

Q. Were you unloading freight from the ship?

Mr. Brennan: I do not hear. I don't know a word he said.

The Court: Stand up closer to this rail, please, and talk slower.

Mr. Brennan: May we have that answer read?

(The last answer was read by the stenographer.)

Q. You were unloading the ship at the time?
96 A. Yes, sir.

Q. Now, what time in the morning did this accident happen to Uravic? A. Around ten-thirty.

Q. And you had started to work about eight o'clock that morning? A. Yes, sir.

Q. Will you describe how the work was conducted before this accident? A. I don't get you.

Q. Just tell us in your own way how this work was being done. A. Well, we start——

Q. How many booms there were and how they

were placed, and so forth. A. There was two 97
booms working in the same hatch, one afterpart and one forward part of the ship. My gang was working in the afterpart, on the heavy lifts, and the other gang was taking out general cargo in the forward part of the ship; but we was taking general cargo from eight to ten; at ten o'clock we started heavy lifts.

Q. At ten o'clock? A. Yes, sir. Before we hoist up the first draft I tell the stevedore, "That boom is too high."

Q. Whom do you mean by the stevedore? A. That is Tom, Tom, I don't know the second name. 98

Q. Was he the man who gave orders? A. He was the man in charge of the ship.

Mr. Brennan: I move to strike that out.
The Court: Stricken out.

Q. Was he the man who gave orders to all the men there working for Jarka? A. Yes, sir. He says, "Never mind, start to work, never mind the boom."

*By the Court:*

99

Q. What did you say was the matter with the boom? What? A. The boom was too high, set too high.

Q. Set too high? A. Set too high.

*By Mr. Stapleton:*

Q. What do you mean by that? A. It was all cases; they were cases; because the cases was too long.

100 Q. Do you mean that the place where the boom is attached to the mast, that it was too high? A. Yes, sir, it was too high, sir.

Q. How many feet too high? A. It was about three feet too high.

Q. What was the effect of having the boom three feet too high? A. Because we have only small drafts before so we don't mind that. The boom was—the fall was seven feet from the coamings. So I told him can go about three feet, that makes it ten feet. Well, anyhow, I started to work the way he told me. I take out about seven or
101 eight cases, very slow. Every one was coming up and striking against the coamings of the ship, the side of the ship.

Q. Every one of those six or seven were hitting against the coaming of the ship? A. Yes, every one; and that one that struck Uravic was the eighth or ninth, I can't remember very good. That was extra heavy, was about three and a half ton. It was a big, heavy case.

Q. How long was it? A. It was about twenty feet long.

Q. How wide? A. I think it was three feet.

Q. Have you any idea how heavy it was? A. It
102 was three ton and a half.

Q. Now, how long is this hatchway? A. Twenty-five feet.

Q. And how wide is it? A. Around eighteen, I guess eighteen feet.

Q. Now, you tell us that as this boom was placed on this occasion it was three feet too high. What effect did that have in the bringing of the boom up from the hatchway?

Mr. Brennan: The boom?

Q. Bringing the draft up from the hatchway. 103

Mr. Brennan: I object to this unless the draft is specified.

Mr. Stapleton: I will withdraw that.

Q. Now, Uradich, where was Anton Uravic working at the time the draft here hit him? A. Anton Uravic was sent in the other side of the coaming of the hatch.

Q. Who sent him there? A. Tom.

Mr. Brennan: I object.

104

A. (Continuing) He said, "Go ahead there and swing the cases—the cases when they come up."

Q. When you mention Tom you mean this stevedore that you referred to previously? A. Yes, sir.

Q. The boss stevedore, is that right? A. Yes, sir.

*By the Court:*

Q. Is that the man that was giving the orders to the gangs? A. Yes, sir.

Q. Including your gang? A. Yes, sir. 105

*By Mr. Stapleton:*

Q. Do you see him in court now, this Tom?

Mr. Stapleton: Have you got this Tom in court?

Mr. Brennan: Here he is right here (indicating).

106 Q. Is this the man (indicating)? A. Yes.

Mr. Stapleton: What is his name?
Mr. Brennan: Micich.

Q. Now, Mr. Uradich, in your own words just tell us what you saw on the occasion when Anton Uravic met with this accident. A. Well, that case that came up——

Q. Speak slowly. A. I was supposed to give a signal to the winchman——

Mr. Brennan: I object.

107 The Court: He was supposed to give a signal to the winchman. Never mind what you were supposed. What did you do? Did you give a signal?

The Witness: Yes, sir, I give a signal to the winchman.

*By the Court:*

Q. What was the signal? A. The signal only with the hands. That means go high, that means stop, and that take on the dock (witness illustrating).

108 Q. What was the signal, to stop or move or what? A. Wait a minute. I got to explain now. The case was coming. The winchman don't watch me because he looking down the hold.

*By Mr. Stapleton:*

Q. The winchman was looking down the hold? A. Yes. He can see the draft himself coming. He stands like that (indicating), handle the

winch with one hand and look down the hold and see the draft coming because the winch is placed right at the coaming of the hatch over the top of the deck. This way he was working (indicating). I was on that side (indicating). But he did not pay attention to me, but he can see the men underneath. 109

Mr. Brennan: I move to strike out "he did not pay any attention."

The Court: Strike it out.

*By the Court*:

Q. What was he doing, looking down the hatch at the time you gave the signal? A. He was looking at the case, yes, sir, when I was giving the signal. 110

*By Mr. Stapleton*:

Q. Tell us how this draft came up that struck Uravic. A. This draft came up underneath the coamings and there it stopped, it catch underneath; and then I was giving the signal to the Burton. I said, "Go ahead on the Burton winch." But they was all excited. Tom was there, the stevedore, and when they see him they lose their control of themselves or something like that and so didn't take the slack on the Burton fall. 111

Q. What do you mean? This winchman on the Burton? A. He didn't take the slack. If he was taking the slack like I told him, "all right, go ahead, go ahead on the Burton" I hollered.

Mr. Brennan: I move to strike out all after the word if, that part of it that I could hear. I think it was incompetent.

112 The Court: I don't know what part you want stricken out.

Mr. Brennan: If the stenographer will kindly read from the word if——

The Court: What is it you understood him to say?

Mr. Brennan: If somebody did such and such a thing then so and so would not have happened.

The Court: All right, that is stricken out of course. We cannot take ifs, ands, or buts.

113 *By the Court:*

Q. We only want what you actually saw or did. Go ahead and start again. You say you passed some kind of a signal to this fellow that was looking down the hatch. Is that right? A. Yes, sir.

Q. That is the winchman? A. Yes, sir.

Q. Then there is another fellow working on the Burton boom? A. On the Burton winch.

Q. All right. What was he doing? A. He is taking the case from the hatch to the dock. There

114 is two falls, one up-and-down and one Burton. This one is taking out of the hatch and the other one is pulling on the dock.

Q. Then he had to take up some slack, did he? A. Yes, sir.

Q. Did you signal him to take up the slack or did he take it up himself? A. Yes, sir, I signaled.

Q. All right. When you signaled did he take up the slack? A. No, sir.

Q. He let it all out loose? A. Yes, sir, let it all out loose. If he was taking up the slack——

The Court: Never mind. That is where you get into what we do not want. Never mind if he did. 115

*By Mr. Stapleton:*

Q. What happened to the draft? A. The draft stuck underneath the coamings and then it was given a little shake on the winch and that case jump from underneath right on top of the coamings against the bulkhead where Uravic was standing.

*By the Court:* 116

Q. Yes; and where did it go then? A. Then she came back.

Q. Came back to what? A. Then she go on the dock after that.

Q. Well, you say it hit the bulkhead. Where did it move to then? A. She hit Uravic.

Q. That is Uravic, that is the man who is dead? Is that what you mean? A. Yes, sir.

Mr. Brennan: We have not had an answer to your Honor's question what it did after it hit the bulkhead. 117

The Court: No.

Q. I want to know what it did after hitting the bulkhead. After it hit Uravic what did it do? A. It was taken on the dock.

Q. I know, but was it hanging—suspended in the air? A. Yes, sir.

Q. You say it caught against the coaming, jumped over the coaming and against the bulk-

118 head and from the bulkhead against Uravic, is that it? A. No, no. From the bottom of the coamings she slipped up right on top where Uravic was standing against the bulkhead.

Q. Oh, it hit Uravic before it touched the bulkhead? A. Yes, sir, sure.

The Court: All right.

*By Mr. Stapleton:*

Q. What were your duties there in the gang? What were your duties as a gangway man? A. My duties?

119 Q. Yes. A. My duty was to give a signal to the winchman.

Q. You were to signal to the winchman as the draft came up as to the movement of that draft, is that right? A. Yes.

*By the Court:*

Q. You gave a signal to the Burton winchman to take up the slack? A. Yes, sir.

Q. What kind of a signal did you give to the other man? A. (Witness illustrates.)

Q. What does that mean? A. Stop.

120 Q. Did he stop? A. He didn't stop. He didn't look at me.

The Court: All right, he did not stop.

The Witness: At the same time he go ahead.

*By the Court:*

Q. He what? A. He go ahead instead of stop.

Q. I don't understand what you are saying.

You gave him a signal to stop, but what did he do? 121
A. He go ahead.

Q. Instead of stopping he started? A. Yes, that is right.

Q. He made the draft move? A. Yes, moved the draft.

Q. Moved it up or down? A. Moved the draft up.

Q. He moved the draft up and you had given him a signal to stop the draft? A. Yes, sir.

Q. And the other fellow to take up the slack in his line? A. Yes, sir.

Q. What happened when the draft hit Uravic? 122
Where was he knocked to? A. Uravic fall down on the cross-beams where he was standing.

Q. Fell down on what? A. On two cross-beams where he was standing there.

Q. Cross-beams, all right. Did he go down into the hatch? A. No, he fall down on those two beams.

Q. And the two beams were on the deck, is that right? A. Yes, between the coaming and the bulkhead.

*By Mr. Stapleton:*

123

Q. What was in back of Uravic, some sort of a house? A. That is a carpenter shop; that is a bulkhead.

Q. Well, he was crushed between this draft and the carpenter shop? A. Yes, sir.

Q. While standing on this planking? A. No, he was standing on two beams.

Q. On these two steel beams? A. Yes.

Q. Now, as this draft swung over the coaming and up to the time it struck Uravic, how many

124 feet did it go? A. Three feet. That is all she can go. If it wasn't the bulkhead maybe go a couple of more feet.

Q. Well, did it go three feet? A. Yes, sir.

Q. As it swung three feet did Uravic have a chance to get out of the way?

Mr. Brennan: That is objected to.

The Court: Objection sustained.

Q. As it swung toward Uravic what did he do, if anything, to get out of the way of the draft?
125 A. He got no chance.

Mr. Brennan: I have no objection to his stating what he did.

The Witness: He got no chance. If he got a chance to go away he would not stay there.

Mr. Brennan: I move to strike it out.

The Court: Stricken out.

*By the Court:*

Q. Just tell us what you saw the man do, what
126 movements he made, if any. A. The man tried to get away with the hands up like that (witness illustrating), but he can't make it, that came too quick on him, see? But he tried to escape but got no chance because there was the beams or something. Maybe when he fall or something maybe got a chance.

Mr. Brennan: I move to strike out "maybe when he fall" and "maybe got a chance".

Mr. Stapleton: I will consent to that. 127
The Court: Strike it out.

*By Mr. Stapleton:*

Q. State whether or not you saw Uravic do anything before this accident to bring this draft on to himself.

Mr. Brennan: I object to that.
The Court: Objection sustained.

Q. Did you see Anton Uravic in any way pull the draft to him or push it away from him be- 128
fore this accident?

Mr. Brennan: I object to that.
The Court: Overruled.
Mr. Brennan: Exception.

*By the Court:*

Q. Did Anton Uravic touch the draft when you were looking at him? A. Yes, sir.

Q. What did he do? A. When the draft coming up on him he tried to stop and push away (witness indicating). 129

Q. Never mind about the push. Apparently, you are dealing with a language you are not any too familiar with. Maybe you use words with meanings you do not intend. Keep away from "tried to do" and all that sort of thing. Tell us what you saw him do and not what you think he did. Don't tell us what you think he was going to do. Now, what did you see him do? Did he put his hand on the draft? A. Before he was struck?

130 Q. Yes. A. No, sir. He was waiting to swing——

Mr. Stapleton: You have answered. That is all.

*Cross examination by Mr. Brennan:*

Q. How long had you known Uravic before his death? A. I know Uravic from the place we work. One year he was working there.

Q. You knew him about a year before his death? A. Yes, sir.

Q. Lived near him? A. No, sir.

131 Q. Did you know his wife? A. No, sir.

Q. What was your occupation on the day of this accident? What was your job on deck that day? A. Gangway man.

Q. The winches which operated the falls going into this number two hold were situated above the deck upon which you were standing? A. Yes, sir.

Q. You were on what they call the well deck and the winches were on the deck above that? A. Yes, sir.

Q. And the winchman could, while operating
132 his winch, look right down into the hold of the ship? A. Yes, sir.

Q. And you say it was your duty when you saw that everything was all right down in the hold to give the winchman the signal to hoist the freight? A. Yes, sir.

Q. That is, when the draft came up to the deck upon which you were standing you would then signal the winchman to stop, is that correct? A. Yes, sir.

Q. Each draft that you took up out of the 133
hold that morning swung a little, didn't it? A. Yes, sir.

Q. And these were very large and heavy cases? A. Yes, sir. They was from two ton up.

Q. All of the cases that you took out before this one that was involved in this case were large and heavy, weren't they? A. Yes.

Q. And were there any as large as the one that is involved in the accident? A. That was the heaviest.

Q. That was the heaviest? A. Yes.

Q. But were there any as large as that? A. 134
No, was around the same size; only the weight was about a half a ton more than the other ones anyhow, over a half a ton.

Q. Well, you say that all of the boxes, all of these large cases, as they came up from the hold swung a little from side to side? A. From side to side. They didn't touch the bulkhead, none of them.

Q. I did not hear you. A. They didn't touch the bulkhead.

Q. They didn't touch the bulkhead? A. No, sir.

Q. Well, how much did they swing? Take the 135
cases that went before this one. How much did they swing from side to side? A. They don't swing much.

Q. Well, can you give us an idea how much they did swing—five inches? A. Maybe a foot or something, a little bit but not much.

Q. Maybe less than a foot? A. Maybe less.

Q. Now, some of those cases were, say, fifteen or eighteen feet long, weren't they? A. Yes, sir.

Q. And perhaps eight or ten feet wide? A.

136 No, they wasn't that wide; was about three feet high and three feet wide all those cases.

Q. But some of them were longer than others? I think that is what you said. A. Yes.

Q. Now, the cases which swung a foot or less, they swung from the forward part of the ship toward the rear that way (indicating), not across the ship? A. No, sir, just a minute.

Q. What? A. The cases come scratching alongside the coamings. When they come to the last coaming, the coaming near the deck, see, have to take the slack of the Burton.

137 Q. I am not asking you anything about that. I move to strike it out. A. I got to explain.

Q. What I am asking you is this, talking about the cases that came up the hold before this case: Did they swing fore and aft or across the ship? A. They didn't swing.

Q. You told us that they swung a foot or less. A. That is all, a little bit.

Q. That is what I am asking you. A. Yes.

Q. Now, did they swing fore and aft or across the ship? A. Fore and aft.

Q. But they did not touch the coaming? A. No, sir. They touch the coaming, they didn't touch

138 the bulkhead, I mean.

Q. We are not talking about the bulkhead at all. We are talking about the coamings of the hatches. A. Well, they was touching the coaming.

Q. Then even a fifteen-foot case would touch the coaming, is that right? A. Fifteen foot? Yes, but very little.

Q. An eighteen foot case would touch the coaming? A. Yes, sir.

Q. Which side of the coaming, fore or aft? 139
A. Aft.

Q. In other words, what you want the Court and jury to understand is that each case as it came up rubbed against the coaming aft? A. Yes, sir.

Q. And that is where Uravic was stationed when the accident happened, in the aft part of the hatch? A. Yes, sir.

Q. Who was present when you spoke to Tom, the foreman, about this boom? A. Well, I don't know if there was somebody around there.

Q. Was there anybody there that you know 140
when you spoke to him? A. I can't say if the man is dead.

Q. I don't hear you. A. He was the only man on deck with me, near my side. The winchman was away on top.

Q. How many men were on deck with you? A. With me was only Uravic, supposed to be, the hooker-on man.

Q. Just you and he on that deck? A. Not on that deck, was plenty of men, but in that gang, in that part of the hatch.

Q. Weren't there twenty or thirty men around that hatch? A. Around the hatch? 141

Q. Yes. A. No, sir.

Q. How many men were there altogether? A. We were only nine men in two gangs.

Q. Well, all those nine men were right there where they could hear you, weren't they? A. No, sir.

Q. Where were you when you spoke to Tom? A. I was on deck.

Q. We know that. A. Between the hatch and the side of the ship.

142 Q. The dock side of the ship? A. The dock side of the ship.

Q. And where was Tom, right there with you? A. Right there with me.

Q. What do you claim that you said to him? A. I said the boom is too high.

Q. How high was it above the hatch? A. It was about seven feet. The fall was hanging seven feet from the rear bulkhead or aft bulkhead—coamings.

Q. The fall descending from the boom was seven feet? A. Seven feet from the coamings.

143 Q. From which coaming? A. Aft.

Q. Now, there was a seven-foot space between that fall as it went down into the hold and the aft coaming? A. That is right.

Q. And was it that way all morning before the accident happened? A. Yes, sir.

Q. Was it that way after the accident happened? A. Yes, sir.

Q. After Uravic was injured and taken off the ship you men went right on with the job, did you? A. Yes, sir.

Q. Took more large and heavy cases out? A. We got only two left after that one.

141 Q. I don't hear you. A. We got only two left after that one.

Q. Well, you took them out with the boom in the same position, didn't you? A. Yes, sir.

Q. Did the two cases that you took out after the accident scrape against the coaming? A. Just the same.

Q. Was it eight o'clock in the morning when you spoke to Tom about it? A. No, sir, it was ten o'clock.

Q. Oh, when you started on the heavy cases? 145
A. When we started on the heavy cases.

Q. And in your opinion nobody heard you but the dead man? A. He was there, the only man was around, because we don't holler, just say, "The boom is too high." "Oh, never mind," he says, "go ahead."

Mr. Brennan: May we have that read?

(The last answer was read by the stenographer.)

Mr. Stapleton: Who said that?

Mr. Brennan: Tom.

146

Q. So you do not holler on board ship? A. I don't holler.

Q. You don't talk any louder on board ship than you do here? A. I don't used to.

Q. What are you, a motorman? A. Yes, sir.

Q. When you want somebody to get off the track you can talk louder than you are now? A. I don't throw them off.

Q. I say, when you want somebody to get off the track you can talk louder than you are talking now, can't you? A. I never.

Q. What? A. I stop the car and wait. I am 147
paid for it.

Q. Now, as I understand it, when this particular load came up it rubbed against the coaming on the deck upon which you were standing, is that right? A. Yes, sir.

Q. How high does that coaming extend above the deck? A. It was about three foot (indicating).

Q. And as the draft came up it rubbed against the coaming on the afterside? A. Yes, sir.

148 Q. You saw it doing that and you knew that when it came above the coaming it would naturally go aft, didn't you? A. Yes, sir.

Q. Did you say anything to Uravic? A. What?

Q. Did you say anything to Uravic? A. No, sir. But——

Q. Wait a minute now. As this twenty foot or twenty-four foot box came up you say that you gave a signal to the winchman to stop? A. Yes, sir.

Q. Where was the draft when you gave that signal to stop? A. The draft was right at the coaming, underneath the coaming.

149 Q. Was it resting on top of the coaming or against the side of the coaming? A. I don't get you.

Q. Was it resting on top of the coaming? Suppose that to be the coaming (indicating). Was it on top of it or against the side like that (indicating)? A. It was on the side underneath.

Q. Well, that big case was coming up slowly, wasn't it? A. It came up slowly so far.

Q. And then when you gave the winchman the signal this case was right up on the deck within eight or ten feet of the winchman, wasn't it, so

150 that he could see it right here? A. Yes, he could see the case right there.

Q. The deck he was on was only about eight feet high? A. That is all.

Q. So that he had no difficulty in seeing this case right where it was? A. (Witness nods his head.)

The Court: He shakes his head yes.

Q. When you gave him the signal to stop he didn't stop? A. No, sir.

Q. How long had you known that winchman? 151
A. The winchman? Oh, a long time.

Q. How long? A. Three years.

Q. And you had seen him operating winches for three years? A. Yes, sir.

Q. Do you know his name? A. Yes.

Q. What is his name? A. Harry Erok.

Q. And did you also know the winchman who was operating the Burton winch? A. Know him, too, for a couple of years.

Q. And had seen him operating winches for years? A. Yes, sir.

Q. Then when the winchman did not obey your 152
signal and the case came up how high did it go above the hatch coaming before it went aft toward the bulkhead? A. Not much, only about half a foot.

Q. Half a foot? A. Half a foot or one foot.

Q. Now, then, do you wish the Court and jury to understand that this great, big, heavy case came up above the coaming and then swung rapidly back against this bulkhead? Please answer. Is that what you want us to understand?

*By the Court:*

Q. Yes or no. A. Yes, sir. 153

*By Mr. Brennan:*

Q. Where had Uravic been working as this case came up from the hold of the ship, where had he been standing? A. He was standing right on the two cross-beams on the rear side on the aft part of the hatch.

Q. Had he been standing there all of the time? A. Yes, sir.

154 Q. As this case came up? A. Yes, sir.

Q. Had he been standing there while the smaller boxes were coming up? A. No, when the small boxes were coming up he was hooking on those drafts.

Q. Hooking the Burton fall or what? What do you mean by hooking on? A. When we got a small draft——

*By the Court:*

Q. Where did he hook? Did he hook the Burton or the other? A. On the Burton fall. We split
155 falls on the small drafts and use two falls together with the big drafts. So he got the Burton always to hook on when we got the small draft.

Q. He was using both hooks then? A. Yes, the Burton hook when we got a small draft but when we got heavy lift he used——

Q. Wait a minute. Never mind what you do. So this man used both hooks at different times? A. Yes, sir.

*By Mr. Brennan:*

156 Q. As I understand it, when you were raising the smaller boxes he was using this hook to attach the Burton fall or winch to the up-and-down, with the smaller boxes, is that right? A. With the general cargo, small boxes.

Q. Then when you came to these twenty-four feet or twenty feet cases you adopted a different procedure, is that right? A. No, sir.

Q. Tell us what you did with it or what you intended to do. A. No small boxes. That was eight or nine heavy lifts, that is why got the falls

together. Use the Burton hooks before the heavy lifts. 157

Q. Was that before ten o'clock? A. Before ten o'clock.

Q. After ten o'clock, when he was lifting out these heavy cases, did he always stand there? A. That is where he sent him to swing the cases around.

Q. Will you please answer me? When you started at ten o'clock to take out these heavy cases did Uravic go in the position aft of the hatch where he was when the accident happened? A. Yes, sir.

158

Q. And he remained there while those eight cases were being taken out? A. Yes, sir.

Q. And you say that Tom, the foreman, or whatever he was, told him to go there? A. Yes, sir.

Q. Well, he could have handled these cases just as well without going aft of the hatch, couldn't he? A. No, he can't.

Q. What?

The Court: Don't shake your head. Say no or yes, whichever your shake means.

The Witness: No, he can't.

159

Q. Then as these seven and eight cases came up what did you and Uravic do with them, when they came above the hatch coaming? A. When the case came above the coaming he take the slack on the Burton winch.

Q. I am not talking about the winchman. What did you and Uravic do after the drafts came above the hatch coaming? A. Above the hatch coaming?

Q. Yes. A. Well, Uravic swung them around.

Q. Uravic alone? A. And Dominick; was two men, was two men to swing the drafts around.

160 Q. What is Dominick's last name, do you know? A. I don't know.

Q. Was Dominick there when Tom told Uravic to stand in the aft part of the ship? A. Dominick wasn't in the aft part of the ship.

Q. He wasn't there? A. He wasn't there, no.

Q. Was he there at ten o'clock when Tom told you to go ahead, that the boom was all right? A. No. He came around after; he came around after.

Q. So that as each draft came above the coaming it was Uravic's duty to turn it around and
161 head it toward the dock? A. Yes, sir.

Q. And when this draft came up he put his hands on it to turn it around, didn't he? A. (No answer.)

Q. Please answer whether he did or not? A. He got no chance to do that.

Mr. Brennan: I move to strike it out.

The Court: Strike out "He got no chance to do that".

*By the Court:*

162 Q. Did he put his hands on it or not to turn it around? A. He put his hands on (witness illustrating)—I don't know how to explain.

*By Mr. Brennan:*

Q. I will ask you again. When this draft came up above the hatch coaming— A. I——

Q. Wait. When the draft came up above the hatch coaming and it stopped, didn't it, before it swung aft? A. How could it? It didn't stop.

Mr. Brennan: I move to strike it out. 163

The Court: No. He says it didn't stop.

Mr. Brennan: He said: "How could it?"

The Court: "How could it" is stricken out. The other part stands.

Q. Didn't this draft, before it struck Uravic, stop going up, before it went aft? A. After it swung.

Q. No, before it went aft, didn't it stop going up? A. It stopped, sure it stopped. If he was——

164

The Court: All right. Never mind reasoning about it.

Q. When this heavy draft came up above the hatch coaming, the winchman stopped it, didn't he? A. Yes.

Q. Then it swung aft? A. Yes, sir.

Q. And caught Uravic? A. Yes, sir.

Q. While it was stopped and before it caught Uravic, didn't he put his hands on it to turn it or do something with it? A. No, sir; he got no time to do——

165

Mr. Brennan: I move to strike out "he got no time".

The Court: Strike it out.

Q. Then he did nothing until it struck him? A. It struck him.

Q. All right? A. That is all.

Q. And how long did it stand before the hatch, before it moved aft to where he was standing? A. Not even a second.

166 Q. A second or so? A. Not even a second; about a second.

Q. About a second. And while the draft stood there above the hatch, what was Uravic doing for that second? A. Was standing there, that is all.

Q. Standing looking at it? A. Yes, sir.

Q. And when this very heavy case struck Mr. Uravic, did it then go back over the hatch again? A. Yes, sir.

Q. Fast or slow? A. (No answer.)

167 *By the Court*:

Q. Fast or slow? A. Fast.

The Court: All right.

*By Mr. Brennan*:

Q. After striking Uravic, did it go back as fast as when— A. It came back——

Q. Wait, please?

The Court: Listen to what you are being asked.

168

Q. After the draft struck Uravic, did it go slowly or rapidly as it went back? A. No, slowed the speed a little.

Q. It slowed up a little? A. Slowed up.

Q. Then after striking Uravic, the Burton winch took that draft over to the side of the ship, didn't it? A. Yes, sir.

Q. And before taking it over, did anybody straighten it out so that it was pointing toward the dock? A. Yes, sir.

Q. Who did that? A. I think I put my hand on 169
and the other—Dominick and the rest that was there.

Q. Well, I will use this pad as an illustration. Suppose this open space here to be the hatch, and here is the afterpart of the ship, and here is the bow (indicating). Now, as this case came up out of the hold, it came up that way (indicating), didn't it? A. It come the other way, like that (indicating), see, with one end on the corner here (indicating).

Q. You don't understand me, perhaps. Suppose that is the afterpart of the ship (indicating)? 170
A. Yes, sir.

Q. And this is the bow and here is the hatch coaming (indicating). Now, this draft came up that way (indicating), didn't it? A. Yes, sir.

Q. That is, with the broad side of it toward the dock? A. It wasn't straight.

Q. Oh, please answer my question? A. It was corner to corner.

Q. Something like that (indicating), was it? A. Yes.

Q. I see. As this came up above the coaming, it was necessary to turn it that way (indicating)? A. Yes, sir. 171

Q. In order to unload it? A. Yes, sir.

Q. That was done with every case, wasn't it, as it came up above it was turned that way (indicating)? A. Yes, sir.

Q. And who did that, who turned it? A. Uravic and the other fellow, Dominick.

Q. Just two men? A. Yes, sir.

Q. They would take it just with their hands no matter how heavy the case was and swing it

172 slowly around and then it would go over to the side of the ship (indicating)? A. Yes, sir.

Q. Now, you said something about the Burton winchman, that he did not obey orders either, is that right? A. Yes, sir.

Q. In other words, when this heavy case came above the coaming up here (indicating) and stopped, then it was the duty of the Burton winch to take it over to the side of the ship? A. That was the duty; but he should take it before, this slack up before she come above the coamings.

Mr. Brennan: I move to strike it out.

173 The Witness: Before she come——

The Court: I will strike out the whole answer. Ask the question again. I don't understand half of what he said.

Mr. Brennan: Yes.

Q. When these cases came above the hatch coaming then the Burton winch would take the case and carry it over to the dock, is that right? A. Yes, sir.

Q. This particular case that injured this plaintiff's intestate, the dead man, that case when it came above the coaming should have been taken by

174 the Burton winch and carried over to the side of the ship? A. Yes, sir.

Q. And that should have been done when the up-and-down motion ceased, stopped? That is, when it stopped going up then the Burton winch should have taken it over, that is correct, isn't it? A. Yes, sir.

Q. And did you signal the Burton winchman to do that? A. Yes, sir.

Q. And he did not do it? A. He didn't take quick enough the slack up to prevent the swing.

Q. So that you wish the Court and jury to understand that if the Burton winchman had obeyed your orders or your signal that then this accident would not have happened? A. Yes, sir. 175

Q. Now, Mr. Uradich, all of these cases as they came up from the hold rested against the afterpart of the coaming, didn't they? A. Yes, sir.

Q. And each one as it came up above the coaming went right back against the bulkhead, didn't it? A. No, sir.

Q. This was the only one that did that? A. Yes, sir.

Q. Then as each case came up it pressed against the afterpart of the coaming and as it was raised above the coaming it did not go aft at all, is that right? A. Yes, sir. Do you know why? 176

Q. No.

The Court: Never mind why.

Q. That is the fact, is it? A. Yes, sir.

Q. I will first show you two photographs, Uradich, and ask you if those two photographs correctly show the type and style of the cases that you were taking out of the ship on that morning (handing the photographs to the witness). A. I didn't—— 177

The Court: Never mind talking about it. Does that correctly or fairly show the type?

The Witness: That is the type.

The Court: Yes?

The Witness: Yes.

Mr. Brennan: I will offer them in evidence.

178 *By Mr. Stapleton:*

Q. Is this the type of draft that struck Uravic (indicating)? A. The long one, the long case.

Q. That is this one (indicating)? A. Yes, sir.

Mr. Stapleton: I object to the introduction of the other one, then.

The Court: What does the other one purport to be, Mr. Brennan? What does this other one purport to be?

Mr. Brennan: They are both illustrations, taken on the morning of the accident,

179 of the boxes that were taken out of the hold of the ship.

The Court: One does not purport to be the type of case that was coming out at the time of the accident.

Mr. Brennan: Yes. I will let your Honor know which one is.

The Court: Well, he accepts one as being the type, the long one, as he says, but the other one he does not seemingly accept.

Mr. Brennan: I am informed that this

180 case, this long case——

The Court: Ask him.

*By Mr. Brennan:*

Q. I show you this photograph and ask you if the long case shown on there is the one that struck Uravic. A. Yes, the long one, but not the other one.

The Court: What is the other one?

Mr. Brennan: The other one is a type of the other cases taken out before the accident happened. The picture is only to show the type of case taken out before the accident happened. 181

The Court: All right, we will receive that with that limitation.

(The photographs were received in evidence marked Defendant's Exhibits A and B.)

Q. I show you four other photographs and ask you if they correctly represent the number two hatch and the surroundings on the steamship "Hamburg" on the day of the accident (handing the photographs to the witness). A. Yes, sir. 182

Mr. Brennan: I offer them in evidence.

(The photographs were received in evidence and marked Defendant's Exhibits C, D, E and F.)

Q. I show you Defendant's Exhibit E and I call your attention to the man standing leaning over the coaming with a peaked cap on and ask you if that is the position occupied by Uravic just before he was struck, if that is where he stood (handing the photograph to the witness). 183

Mr. Stapleton: Which question is it? The position?

Mr. Brennan: Well, I did not mean that he was leaning over.

Q. Is that about where he was standing? A. That is about where he was standing, yes, sir.

181 Q. And that is about a three-foot space, is it? A. Yes, sir.

Q. Between the coaming and the bulkhead? A. Yes, sir.

Q. And the beams that he was standing on were steel hatch beams, weren't they? A. Yes, sir.

Q. Mr. Uradich, do you remember on the morning of this accident, right down there on the dock, making a statement to anybody as to what you had seen and how it occurred? A. Yes, sir.

Q. You made a statement to Mr. Gardella who sits here (indicating), didn't you? A. I guess so; I don't know; I don't remember.

185 Q. And you signed your name to that paper, didn't you? A. I guess so.

Q. You put your initials on each page of the paper as he wrote it out? A. Yes, I did.

Q. And then at the end you signed your name to it and this is your signature, isn't it (handing a paper to the witness)? A. Yes, sir.

Q. And you told Mr. Gardella the truth that morning, didn't you? A. I guess so.

Q. Why do you guess? Don't you know that you told him? A. I said the same.

Q. You told him the truth, didn't you? A.

186 Yes, sir.

Q. Was Dominick at the afterpart of the hatch with Uravic? A. Yes, sir.

*By the Court*:

Q. You mean at the time the accident happened? A. The same time.

*By Mr. Brennan*:

Q. How close was he to Uravic? How close

was he standing to where Uravic was standing? 187
A. About three or four foot.

Q. He got out of the way of this case, didn't he—Dominick? A. He was standing out of the way.

Q. Well, he moved out of the way, didn't he, when the case started to come back? A. Well, I don't know. I can't see everything.

Q. Do you remember saying this to Mr. Gardella, on the morning of this accident: "A case was being lifted out of the hatch and Dominick and Tony were on the afterpart of the hatch on the main deck and near the offshore side and 188
were pushing on the wire sling around one end of the case to hold it out from the underpart of the coaming." Did you tell that to Mr. Gardella? A. I don't remember about that.

Q. You say you don't remember? A. I don't remember.

Q. Will you swear you did not tell him that? A. I can't swear, but I can't remember what I says; time passes; I don't remember.

Q. If you did tell him that on the morning of the accident was it true, that these two men were pushing on the wiring of the crate, pushing it away from the coaming? A. I don't know. 189

Q. You don't know? A. No, sir.

Q. Do you know what they were doing that morning? A. I don't remember what I say in the statement.

Q. Well, do you remember what they were doing that morning, whether they were pushing on the crate or not? A. Pushing on the——

*By the Court:*

Q. On the draft? A. On the draft?

190 *By Mr. Brennan:*

Q. Yes. A. Maybe they was pushing, too. I don't know because I can't see everything, you know.

Q. Well, when did you make up your mind that Uravic did not touch it at all? When did you come to that conclusion that Uravic did not touch it before he was hurt? A. When I come to that conclusion?

Q. Yes. A. I don't know myself.

Q. Was it after you spoke to some lawyer? A. No, sir.

191

Q. Or some lawyer's assistant about it? A. No, sir, because I can't remember if he was pushing or not. That is what I tell you.

Q. You don't remember now whether Uravic put his hand on this case or not, do you now say? A. I say keep his hand like that (indicating), that is what I say before, but you put his hands here (indicating).

Q. I will ask you once more— A. That is what I say.

Q. —if you told Mr. Gardella on the morning of this accident, right after the accident hap-

192 pened, that these two men were pushing on the wire sling around one end of the case to hold it out from the underpart of the coaming. Was that true or not? A. Maybe I said; maybe it was true, maybe not, because I can't remember good.

Q. You don't know now whether it is true or false, do you? A. No false. I don't remember what I tell him.

Q. Do you remember what happened that morning? A. That is what I say. I tell you he keep his hands up like that (indicating).

Q. Do you remember what happened that morning? A. Yes, what I said before. 193

Q. Do you remember what you told Mr. Gardella? A. I said maybe that true or not, I don't know. I can't remember what I say; I was too excited.

The Court: Do not waste any more time. Mark that in evidence if it is a claimed prior contradictory statement.

Mr. Brennan: Very well.

The Witness: I was too excited that day.

194

Q. Did you say anything to Mr. Gardella about the winch-man not obeying your signals?

Mr. Stapleton: I object to it, your Honor, unless the statement is put in evidence.

Mr. Brennan: I will offer the entire statement in evidence.

(The paper was received in evidence and marked Defendant's Exhibit G.)

(Mr. Brennan read Defendant's Exhibit G to the jury.) 195

*By Mr. Brennan:*

Q. Is that statement, as I have just read it to the Court and jury, a correct statement of how this accident happened? A. Yes, about that.

Q. Then these two men did put their hands on the case and shove it away from the after hatch coaming?

196 The Court: There is no need of going all over that.

Mr. Brennan: All right, I will stop right now. Just one more question.

Q. There were two gangs working on this hatch on this morning. That is not unusual, is it? A. No, sir.

Q. In fact, you have seen occasions when there were three gangs working on hatch number two? A. Yes, sir.

Q. Sometimes as many as four gangs working
197 on one hatch? A. Yes, sir.

Q. And that has been your experience in all of the stevedoring companies you have been connected with? A. Yes, sir, but only I——

The Court: Wait a minute. Yes is the answer.

Mr. Brennan: That is all.

*Re-direct examination by Mr. Stapleton:*

Q. Now, this draft that struck Uravic was how long? A. Was about twenty feet, I guess.

198 Q. You said as it came up it touched the coaming, it hit against the aft part of the shaft, is that right? A. Yes, sir.

Q. Did all the other heavy drafts, from ten o'clock on, hit against the side of the shaft? A. They was crashing up, every one.

Q. Every one since ten o'clock. A. None of them go against the bulkhead (indicating).

Q. None of them hit against the bulkhead except the one that hit Uravic? A. The one that hit Uravic, yes, sir.

Q. If this boom that you referred to previously had been raised three feet, would any of these drafts have hit against the side of the ship? 199

Mr. Brennan: That is objected to.

The Court: Objection sustained.

Q. State what effect, if any, the raising of the boom would have had upon any of the drafts, on any of the heavy drafts since ten o'clock.

Mr. Brennan: That is objected to, if the Court please.

Mr. Stapleton: I will withdraw that. 200

Q. State what effect, if any, the raising of the boom would have had on the drafts that were raised previous to this accident, as to whether or not they would hit against the side of the hatchway coming up.

Mr. Brennan: I object to it.

The Court: Objection sustained.

Mr. Stapleton: Exception. That is all. That is the plaintiff's case.

Mr. Brennan: If your Honor please, I move to dismiss upon the ground it appears affirmatively that the negligence was the negligence of a fellow employee of the plaintiff for which this defendant is not responsible. 201

The Court: You say you do not rest on the common law, you are resting on the Jones Act?

Mr. Stapleon: The Jones Act.

The Court: And the negligence that is

202 complained of is the contributory negligence of a fellow servant, of either one or both of these men. Even this man Tom is a fellow servant under the common law. Under that situation there is no getting away from this Clark v. Montezuma case, which is a Second Department case, which holds the Jones Act does not apply to a British ship in an American port.

Mr. Stapleton: Well, the situation, as I understand it, has been changed since the Haverty decision.

203 The Court: No. The Haverty case does not affect the situation at all. The Haverty case merely makes the longshoreman a seaman. Making him a seaman, he is an American seaman working on a German vessel in this case. This is the seaman case, this Clark case. So that the only effect of the Haverty case is to make this man a prototype of the deceased in the Clark case, that is an American seaman.

Mr. Stapleton: I know, Judge. All the decisions, including the Montezuma, the Steppani case, and so forth, were on the

204 basis that this Act applies only to American registered vessels. Now a close reading of the Haverty case will show that Judge Holmes intended that a broad scope be given to that Act, that it not only included seamen but also included longshoremen.

The Court: Of course. There is no dispute about that. A longshoreman is a seaman.

Mr. Stapleton: But under the Haverty 205
case and under other cases——

The Court: Wait a minute. We are all agreed on that, that a longshoreman is a seaman. Now, then, in the Clark case an American seaman on a British vessel may not have the benefit of the Jones Act.

Mr. Stapleton: As against the ship that may be so. But this is against the stevedore company. This is a case where the man is hired in New York City and the suit is against the stevedore company, not against the ship. All those cases have been 206
cases practically *in rem*, in libel.

The Court: Wait a minute. It does not make any difference whether it is against the ship or who it is against. The theory of holding that the Jones Act does not apply is that the accident is claimed to have happened on a piece of territory that is not United States territory. It is the *locus*, the site of the accident that is controlling there, what law shall apply, whether the law of the flag or the law of the seaman. It is the law of the flag that controls. The
law of the flag is not an American law; 207
therefore it is not the Jones Act.

Mr. Stapleton: Well——

The Court: I have the Haverty case right here. The only point involved in the Haverty case is whether or not the particular kind of work that is involved is or is not of a character that would bring him within the terms of seaman. Then he lays down a rule to apply. So we get by the Haverty case and we hold that this man is

208 a seaman. Then you are up against the Clark case. As a matter of fact, in the Clark case they had both in there, they had both the stevedore and the vessel—they had a charterer of the vessel in.

Mr. Stapleton: There is no question, as regards the Montezuma case and all the other cases, all those decisions have been knocked into a cocked hat with the Haverty case.

The Court: I do not agree with you. The Clark case, 217 A. D. 172, and in
209 the Pinordo del Rio case, which is 16 Federal, Second Series, 984, United States Circuit Court of Appeals, over here in Manhattan, has a corresponding holding and follows the Clark case and cites it. The complaint is dismissed and exception to the plaintiff.

Mr. Stapleton: Will you give me a stay of sixty days to make a case, Judge?

The Court: Oh, yes.

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210 **Statement That Case Contains All the Evidence.**

This case contains all the evidence had and adduced upon the trial of this action, as well as the exceptions of both sides.

Defendant's Exhibit A

## Defendant's Exhibit A.

211

(REPRINT.)

Photograph.

212

213

214

## Defendant's Exhibit B.

(REPRINT.)

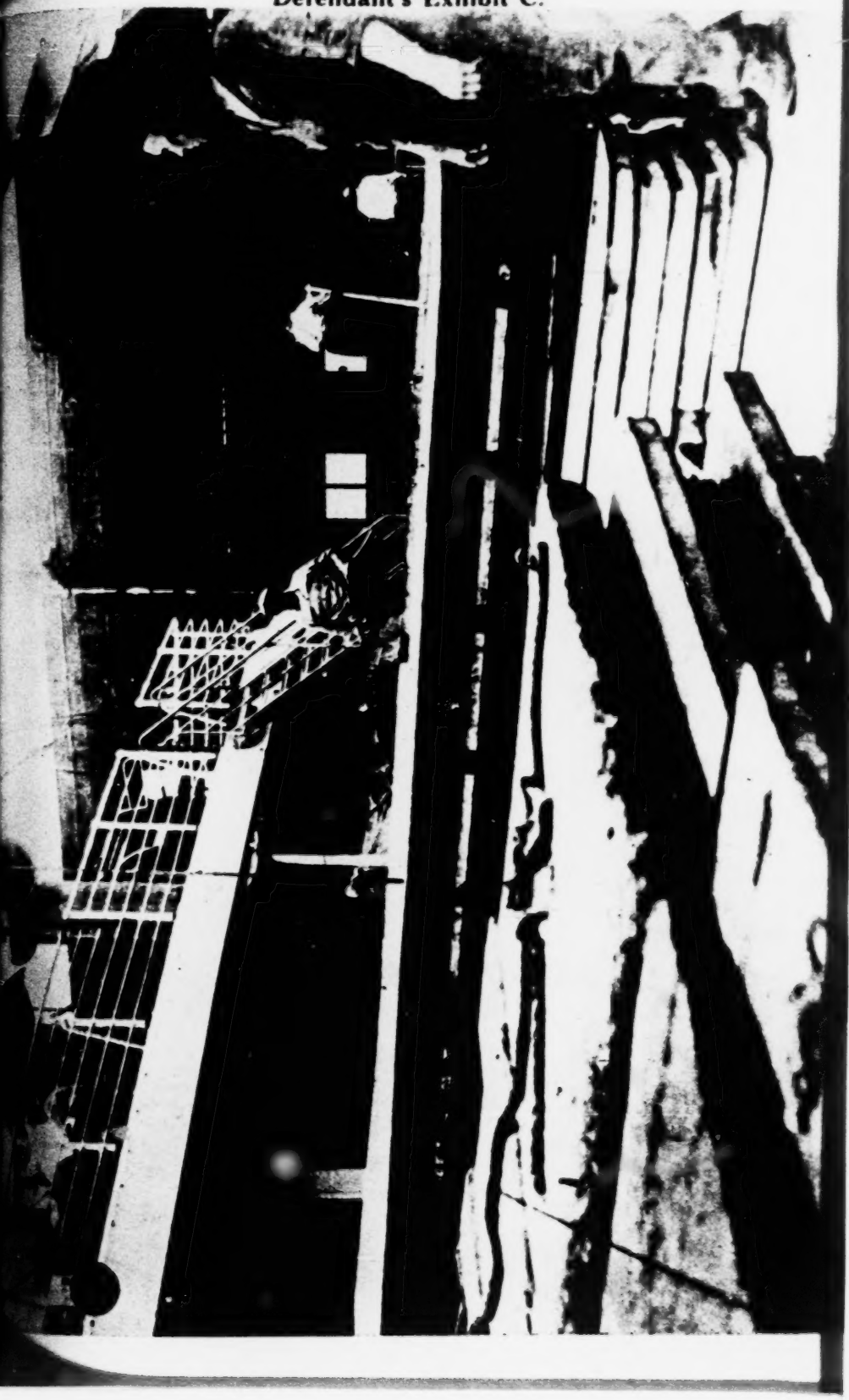
Photograph.

215

216

Defendant's Exhibit B.

Defendant's Exhibit C.



**Defendant's Exhibit C.**

217

(REPRINT.)

Photograph.

218

219

## Defendant's Exhibit D.

220

(REPRINT.)

Photograph.

221

222

Defendant's Exhibit D.

Defendant's Exhibit E.

## Defendant's Exhibit E.

223

(REPRINT.)

Photograph.

224

225

## Defendant's Exhibit F.

226

(REPRINT.)

Photograph.

227

228

Defendants Exhibit F.

## Defendant's Exhibit G.

July 15, 1926. 229

Romano Yuretich, says I live at 422 Degraw Street, Brooklyn, N. Y. I am 35 years old and married. I have worked as a longshoreman about 14 years and have worked at Pier 86 North River, New York City about four years.

I have worked as a gangwayman eight or more years.

On July 13, 1926 I was working as gangwayman at hatch #2 of the S.S. "Hamburg" docked at Pier 86 North River, New York City and started working at 8 A. M. We were discharging from the 230
'tween deck.

There were two gangs working in the hatch.

One gang on general cargo and our gang on the heavy lifts.

In our gang we had five men on deck which counted Tony Urabic who was hurt at about 10:40 A. M. Two of the men were winchmen who were at the winches on top of the carpenter shop, and an extra man Domenick.

Tony was the hooker on.

We were taking heavy cases out of the 'tween deck and had taken out about nine of the cases when the accident happened. 231

A case was being lifted out of the hatch and Domenick and Tony were on the after part of the hatch on main deck and near the off shore side and were pushing on the wire sling around one end of the case to hold it out from the under part of coaming, and as the case was lifted one end of it was against the inside of the main deck hatch coaming and when the case was lifted clear

*Defendant's Exhibit G.*

232 of the coaming it swung aft toward Tony and jammed him against the bulk-head or carpenter shop. Domenick was on the inshore side of Tony and got out of the way, but Tony could not get out of the way as it swung in too quick.

I was giving the signals to the winchman. The winchman can see the hold from where they are located on top of the carpenter shop.

There is about three feet between the aft part of the hatch and carpenter shop and there were two cross beams in this space between carpenter shop and hatch. These beams were on edge and Tony was on the beams when he was hurt.

233 Myself and Tony and other deckmen placed these beams this morning at 8 A. M.

There was plenty of room to put these beams besides where we placed them but we place them between the carpenter shop & coaming to have them handy and to have them out of our way.

The case we were handling when the accident happened was about twenty feet or more in length and three feet wide and three feet high and weighed about three ton.

We had two wire slings around the case about five feet from each end of the case.

234 The case was coming out the hatch with its length fore and aft and Tony had to take hold of the case to swing it around to send it across ship to avoid the guides, stays and ladders.

The hatch is about twenty-five feet fore and aft and about fifteen feet athwart ships.

There were twelve men in the 'tween decks, six men in each gang, and there were five men on the deck in the other gang working on forward side of hatch #2.

*Defendant's Exhibit G.*

The winches we were using were in very good 235
condition, we had no trouble with the winches.

There is no other way to handle a heavy case in a safe manner than with the two wire slings as we were doing it this day. I have no knowledge of anything out of order or defective and the only reason for the accident was that the case was a long one.

The slings were all in good shape. The day is a bright, warm day.

I have been acquainted with Tony about one year.

After the accident we gave Tony a drink of 236
water then we put him in a box and took him to the dock by means of the winch.

(s) ROMANO YURETICH.

(s) C. J. GARDELLA,
July 13 '26

237

## Affidavit of No Opinion.

238

State of New York,
County of New York—ss.:

FREDERICK R. GRAVES, being duly sworn, says:

I am the attorney for the plaintiff-appellant in this action and am familiar with all the proceedings herein.

No opinion was delivered by the Court below.

FREDERICK R. GRAVES.

239

Sworn to before me this
day of August, 1927.

PAUL C. MATTHEWS,
Notary Public,
New York Co.

240

## Stipulation Settling Case.

241

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties hereto that the foregoing case contains all the evidence taken upon the trial and all exceptions of all parties and that an order may be entered herein settling the same as such and ordering the same on file without further notice.

Dated, New York, August , 1927.

FREDERICK R. GRAVES,
Attorney for Plaintiff-Appellant.

242

ALMY, VAN GORDON & EVANS,
Attorneys for Defendant-Respondent.

---

## Order Settling Case.

On the foregoing stipulation the above case on appeal which contains all the evidence and exceptions of all parties is hereby settled and ordered on file.

Dated, New York, August , 1927.

243

WILLIAM B. CARSWELL,
J. S. C.

## Stipulation Waiving Certification.

244

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties hereto that the foregoing are true copies of the judgment roll, the notice of appeal, the case and exceptions as settled; the order dismissing the complaint and the whole thereof now on file in the office of the Clerk of the County of Kings, and that certification thereof is hereby waived and that an order directing the filing of the record in the Appellate Court may be entered without further notice.

Dated, New York, August , 1927.

245

FREDERICK R. GRAVES,
Attorney for Plaintiff-Appellant.

ALMY, VAN GORDON & EVANS,
Attorneys for Defendant-Respondent.

---

## Order Filing Record in Appellate Division.

Pursuant to the foregoing stipulation, it is ordered that the foregoing printed record be filed
246 in the office of the Clerk of the Appellate Division of the Supreme Court, Second Judicial Department.

Dated, New York, August , 1927.

WILLIAM B. CARSWELL,
J. S. C.

# ADDITIONAL PAPERS TO COURT OF APPEALS.

## Notice of Appeal to Court of Appeals.

247

NEW YORK SUPREME COURT,

KINGS COUNTY.

---

ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, Deceased,

Plaintiff,

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

248

Defendants.

---

*Sirs*:

PLEASE TAKE NOTICE that pursuant to leave granted by order of the Appellate Division of the Supreme Court for the Second Judicial Department, dated April 8th, 1929, and entered in the office of the Clerk of the said Appellate Division on the 8th day of April, 1929, the plaintiff Anna Uravic, as Administratrix of the goods, chattels and credits which were of Anton Uravic, deceased, hereby appeals to the Court of Appeals of the 249
State of New York from the judgment entered in the office of the Clerk of the County of Kings on the 7th day of March, 1929, on the order of the said Appellate Division dated February 15, 1929, affirming the judgment entered herein in the office of the Clerk of the County of Kings on

250 the 7th day of April, 1927, and from each and every part of said judgment as well as the whole thereof.

Dated, New York, April 27th, 1929.

Yours, etc.,

PAUL C. MATTHEWS,
Attorney for Plaintiff,
Office & P. O. Address,
11 Broadway,
Borough of Manhattan,
251 City of New York.

To:

ALMY, VAN GORDON & EVANS, ESQS.,
Attorneys for Defendants,
140 Nassau Street,
New York City.

WILLIAM E. KELLY, ESQ.,
Clerk.

252

## Order of Affirmance.

253

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 15th day of February, 1929.

Present—Hon. Edward Lazansky,
*Presiding Justice.*
" " Adelbert P. Rich,
" " J. Addison Young,
" " William F. Hagarty, 254
" " Townsend Scudder,
*Justices.*

---

Anna Uravic, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, deceased,

Appellant,

—against—

F. Jarka Company, Inc.,

Respondent,

United American Line, Inc., 255

Defendant.

---

The above named Anna Uravic, as Administratrix, etc., the plaintiff in this action having appealed to the Appellate Division of the Supreme Court from a judgment of the Supreme Court entered in the office of the Clerk of the County of Kings on the 7th day of April, 1927, herein, and

256 the said appeal having been submitted by Mr. Paul C. Matthews of Counsel for the appellant and submitted by Mr. Thomas Brennan of Counsel for the respondent, and due deliberation having been had thereon,

IT IS ORDERED AND ADJUDGED that the judgment so appealed from be and the same is hereby unanimously affirmed, and that the respondent recover of the appellant the costs of this appeal.

Enter,

E. L.,

257 P. J.

---

## Judgment of Affirmance.

SUPREME COURT,

KINGS COUNTY.

ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, deceased,

Plaintiff,

258 —against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

Defendants.

The above named plaintiff having appealed to the Appellate Division of the Supreme Court, Second Department, from the order of Hon. William B. Carswell, one of the Justices of this Court, dismissing the complaint of the plaintiff

herein and from the judgment entered thereon 259
by the defendant F. Jarka Company, Inc., on the 7th day of April, 1927, entered in the office of the Clerk of the County of Kings, dismissing the complaint, and for $144 costs, and the said appeal having been duly heard by the Appellate Division of the Supreme Court, Second Department, and after due deliberation, the said Appellate Division of the Supreme Court, Second Department, having ordered and adjudged that the said judgment and order so appealed from as aforesaid, be unanimously affirmed with costs to the defendant F. Jarka Company, Inc., and the
said Appellate Division having sent hither its 260
remittitur filed herein on the 4th day of March, 1929, and the costs of the defendant F. Jarka Company, Inc., having been duly taxed in the sum of $70 80/100.

Now, on motion of Almy, Van Gordon & Evans, attorneys for the defendant F. Jarka Company, Inc., it is

ADJUDGED that the defendant F. Jarka Company, Inc., have judgment against the plaintiff Anna Uravic, as administratrix of the goods, chattels
and credits which were of Anton Uravic, de- 261
ceased, for the sum of $70 80/100 costs as taxed, and that said defendant have execution therefor.

Judgment signed and entered this 7th day of March, 1929.

WILLIAM E. KELLY,
(Seal) Clerk.

## Order of Appellate Division Denying Motion for Reargument.

262

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 8th day of April, 1929.

Present—Hon. Edward Lazansky,
*Presiding Justice.*
" " Adelbert P. Rich,
" " Isaac M. Kapper,
263 " " William F. Hagarty,
" " Townsend Scudder,
*Justices.*

---

Anna Uravic, as Administratrix, etc., of Anton Uravic, deceased,
Appellant,
—against—
F. Jarka Company, Inc.,
Respondent,
United American Line, Inc.,
264
Defendant.

---

The above named Anna Uravic, as administratrix, etc., of Anton Uravic, deceased, the appellant in this action having moved this Court for a reargument of the appeal herein and the motion having duly come on to be heard and the

*Order of Appellate Division Denying Motion for Reargument.*

papers and briefs of the respective parties in support thereof and in opposition thereto having been filed:

265

Now on reading and filing the papers upon which said motion is based and the opposing papers, and upon considering the said papers and all the papers upon which the appeal was heard; and the said motion having been submitted by Mr. Paul C. Matthews of counsel for the appellant and submitted by Mr. John W. Van Gordon of counsel for the respondent;

266

It is ordered that the said motion be and the same is hereby denied.

Enter,

E. L.,
P. J.

267

## Order of Appellate Division, Granting Leave to Appeal to Court of Appeals.

268

At a Term of the Appellate Division of the Supreme Court of the State of New York held in and for the Second Judicial Department at the Borough of Brooklyn, on the 8th day of April, 1929.

Present—Hon. Edward Lazansky,
*Presiding Justice.*
" " Adelbert P. Rich,
" " Isaac M. Kapper,
269 " " William F. Hagarty,
" " Townsend Scudder,
*Justices.*

[SAME TITLE.]

The above named Anna Uravic, as administratrix, etc., of Anton Uravic, deceased, the appellant in this action having moved for leave to appeal to the Court of Appeals from the order of this Court, entered on the 15th day of February, 1929, and from the judgment entered thereon, herein; and the motion having duly come on to be heard and the papers and briefs of the respective parties in support thereof and in opposition thereto having been filed;

270

Now on reading and filing the papers upon which said motion is based, and the opposing papers, and all the papers upon which the appeal was heard; and due deliberation having been had thereon; and the said motion having been sub-

*Order of Appellate Division, Granting Leave to Appeal to Court of Appeals.*

271

mitted by Mr. Paul C. Matthews of counsel for the appellant and submitted by Mr. John W. Van Gordon of counsel for the respondent;

It is ordered that the said motion be and the same is hereby granted, and this Court hereby certifies that in its opinion a question of law is involved which ought to be reviewed by the Court of Appeals.

Enter,

E. L.,
P. J.
J. S. C. 272

273

## Affidavit of No Opinion.

274

State of New York,
County of New York—ss.:

PAUL C. MATTHEWS, being duly sworn, says:

I am the attorney for the plaintiff-appellant in this action and am familiar with all the proceedings herein.

No opinion was delivered by the Appellate Division, Second Department.

275 PAUL C. MATTHEWS.

Sworn to before me this
29th day of May, 1929.

F. G. BERNHOLZ,
Notary Public,
New York County.
N. Y. Co. Clk's No. 824, Reg. No. 0-9A.
Cert. filed in Kings Co. No. 369.
Commission expires March 30, 1930.
(Seal)

276

## Stipulation Waiving Certification of Record to Court of Appeals.

277

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that the foregoing are true and correct copies of the Record on Appeal as filed with the Clerk of the Appellate Division, Second Department; the Notice of Appeal to the Court of Appeals; the Order of Affirmance; the Judgment of Affirmance; the Order of the Appellate Division denying reargument and the Order of the said Court, granting leave to appeal; all of which are now on file with the Clerk of the County of Kings, Certification thereof hereby is waived.

278

Dated, New York, May 29th, 1929.

PAUL C. MATTHEWS,
Attorney for the Plaintiff-Appellant.

ALMY, VAN GORDON & EVANS,
Attorneys for the Defendant-Respondent.

279

## Order of the Supreme Court, Kings County, Making the Order of the Court of Appeals Its Own Order.

283

At a Special Term, Part II of the Supreme Court, held in and for the County of Kings, at the Courthouse thereof, in the Borough of Brooklyn, City of New York, on the 4th day of November, 1929.

Present—HON. JAMES A. DUNNE, *Justice.*

---

284

ANNA URAVIC, Administratrix of the Goods, Chattels and Credits of Anton Uravic, Deceased,

Plaintiff,

—against—

F. JARKA COMPANY, INC.,

Defendant.

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The plaintiff in the above entitled action having appealed to the Court of Appeals of the State of New York from a judgment entered in the Office of the Clerk of the County of Kings, on the 7th 285
day of March, 1929, upon the order of the Appellate Division, Second Department, entered in the office of the Clerk of said Appellate Division, on the 15th day of February, 1929, affirming the judgment with costs, heretofore entered in the office of the Clerk of the County of Kings on the 7th day of April, 1927, and upon the order of said Appellate Division, dated and entered April 8, 1929, granting leave to the plaintiff to appeal to the Court of Appeals of the State of New York,

286 and said appeal having been duly heard in the Court of Appeals and after due deliberation the said Court of Appeals having ordered and adjudged that said judgment so appealed from be affirmed with costs, and the said Court of Appeals having further ordered that the record of proceedings in said Court of Appeals be remitted to the Supreme Court there to be proceeded upon according to law.

Now, on reading and filing the remittitur from the Court of Appeals of the State of New York, and upon motion of Almy, Van Gordon & Evans,
287 attorneys for the defendant, F. Jarka Company, Inc., it is

ORDERED, that the said order of the Court of Appeals be and the same hereby is made the order of this Court.

Enter,

JAMES A. DUNNE,
J. S. C.

Granted—Nov. 6, 1929.

288 FRED. G. LEMMERMANN,
Clerk.

## Judgment of Supreme Court, Kings County, Entered Upon the Order and Judgment of Affirmance by the Court of Appeals.

289

SUPREME COURT,

KINGS COUNTY.

---

ANNA URAVIC, Administratrix of the Goods, Chattels and Credits of Anton Uravic, Deceased,

Plaintiff,

—against—

F. JARKA COMPANY, INC.,

Deefndant.

290

---

Plaintiff in the above entitled action having appealed to the Court of Appeals of the State of New York, from judgment dismissing plaintiff's complaint, entered in the office of the Clerk of the County of Kings, on the 7th day of March, 1929, upon the order of the Appellate Division of the Supreme Court, Second Department, dated February 15th, 1929, and affirming the judgment heretofore entered in the office of the Clerk of the County of Kings, on the 7th day of April, 291
1927, and the Court of Appeals having heard such appeal and having ordered and adjudged that the judgment of the Appellate Division, Second Department, be affirmed with costs, and having further ordered that the record of the proceedings of said Court be remitted to the Supreme Court there to be proceeded upon according to law, and the remittitur from the Court of Appeals having been filed in the office of the Clerk of the County

292 of Kings, and an order having been entered thereon, making the order of the Court of Appeals the order of this Court and affirming with costs the order and judgment of the Appellate Division appealed and the judgment entered thereon in the office of the Clerk of the County of Kings, on the 7th day of March, 1929, and directing the Clerk of this Court to enter such judgment for costs and the defendant's costs having been duly taxed at the sum of $97.69,

Now, on motion of Almy, Van Gordon & Evans, attorneys for the defendant, F. Jarka Co., Inc., it is ordered the judgment of the Appellate
293 Division of the Supreme Court, Second Department, be and the same is hereby affirmed, further adjudged that the defendant, F. Jarka Company, Inc., do recover of the plaintiff, Anna Uravic, as administratrix of the goods, chattels and credits of Anton Uravic, deceased, in the sum of $97.69 costs as taxed and that the said defendant have execution therefor.

Dated, New York, November 18th, 1929.

FRED. G. LEMMERMANN,
Clerk.

294 (Seal)

## Order and Judgment of Affirmance by the Court of Appeals.

295

COURT OF APPEALS.

State of New York—ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 22nd day of October, in the year of our Lord one thousand nine hundred and twenty-nine, before the Judges of said Court.

296

WITNESS:

THE HON. BENJAMIN N. CARDOZO, Chief Judge, presiding.

WM. J. ARMSTRONG, Clerk.

Remittitur—October 23, 1929.

---

ANNA URAVIC, as Admrx., etc.,

Appellant,

—against—

F. JARKA COMPANY, INC., Impld., etc., 297

Respondent.

---

Be it remembered, that on the 3rd day of June in the year of our Lord one thousand nine hundred and twenty-nine, Anna Uravic, as administratrix, etc., the appellant in this cause, came here unto the Court of Appeals, by Paul C. Matthews, her attorney, and filed in the said Court a notice of appeal and return thereto from the judgment of

*Order and Judgment of Affirmance by the Court of Appeals.*

298

the Appellate Division of the Supreme Court in and for the Second Judicial Department. And F. Jarka Company, Inc., the respondent in said cause, afterwards appeared in said Court of Appeals by Almy, Van Gordon & Evans, its attorneys.

Which said notice of appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals, this cause having been submitted by counsel for the respective parties, and after due deliberation had thereon, did order and adjudge that the judgment

299

of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, with costs, on the authority of Resigno v. F. Jarka Co., Inc., 246 N. Y. 537.

And it was also further ordered that the record aforesaid, and the proceedings in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed, with costs, etc., etc., as aforesaid.

And hereupon, as well the notice of appeal and return thereto aforesaid as the judgment of the

300

Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court before the Justices thereof, etc.

WM. J. ARMSTRONG,
Clerk of the Court of Appeals
of the State of New York.

*Certificate of County Clerk.*

Court of Appeals, Clerk's Office, 301
Albany, October 23, 1929.
Albany.

I hereby certify that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

WM. J. ARMSTRONG,
Clerk.

(SEAL)

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302

## Certificate of County Clerk.

State of New York,
County of Kings—ss.:

I, FRED G. LEMMERMANN, Clerk of the Supreme Court in and for said County, and Clerk of the Supreme Court of said State, do hereby certify that the foregoing consists of certified copies of the order and judgment on the remittitur, which are on file in my office.

IN WITNESS WHEREOF, I have hereunto set my 303
hand and affixed my official seal, this day of December, A. D. 1929.

FRED G. LEMMERMANN,
Clerk.

(SEAL)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 3, 1930

The petition herein for a writ of certiorari to the Supreme Court of the State of New York is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

No. 132

JAN 18 19

CHARLES ELMORE CR

# Supreme Court of the United States,

OCTOBER TERM 1929—NO.

ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, deceased,

*Petitioner,*

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

*Respondents.*

## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK FOR KINGS COUNTY, AND BRIEF IN SUPPORT THEREOF.

VERNON S. JONES,
*Counsel for Petitioner.*

THE COURT PRESS—Law Printers—47 West Street—Bowling Green 2820-1-4

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(b) Section 33 of the Merchant Marine Act of 1920 is designed to affect the relationship of an employer and employee. It does not affect vessels as such..... 11

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# Supreme Court of the United States.

OCTOBER TERM 1929—NO.

---

ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, deceased,

*Petitioner,*

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

*Respondents.*

---

## *PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK FOR KINGS COUNTY.*

The petitioner, Anna Uravic, as administratrix, prays that a writ of certiorari issue to review a final judgment of the Court of Appeals of the State of New York, entered on October 22nd, 1929, affirming a judgment of the Supreme Court of the State of New York dismissing the complaint in the action.

Following the judgment of the Court of Appeals and pursuant to an order of that Court, the record and the proceedings in the Court of Appeals were remitted to the Supreme Court of the State of New York for the County of Kings, where the judgment of the Court of Appeals was made the judgment of the Supreme Court. The order remitting the record appears at folios 299-300 of the record.

## *Jurisdiction.*

The judgment of the Court of Appeals was entered on October 22nd, 1929.

The jurisdiction of the Court is provided by Section 344 (b) of Title 28 of the United States Code.

## *Opinions Below.*

The Court of Appeals wrote no opinion. However, in affirming, it did so "on the authority of *Resigno* v. *F. Jarka Co., Inc.*, 246 N. Y. 537". The correct citation for that case is 248 N. Y. 225.

The judgment of the Court of Appeals appears at page 99 of the record. The decision is reported in 252 N. Y. 24 (memorandum in advance sheets).

The trial Court wrote no opinion. However, on the trial, there was extended oral argument between the Court and trial counsel, which shows that the dismissal was on a ground involving a Federal question. The argument on the dismissal appears at pages 67-70 of the record.

## *The Questions Presented.*

1. Whether Section 33 of the Merchant Marine Act of June 5th, 1920, commonly referred to as the Jones Act, applies in an action between a plaintiff who is the personal representative of a deceased American longshoreman and a defendant which is an American stevedoring company, and was the employer of the plaintiff's intestate, where the longshoreman was killed through the negligence of the defendant or of its employees while he was working on a vessel of foreign registry lying at the time in navi-

gable waters of the United States, there being no privity of contract between the plaintiff's intestate and the owner of the vessel. In other words, does the happening of the accident on a foreign vessel mean that it happens on foreign territory?

2. If so, has the Jones Act any extra-territorial application?

3. Can both these questions be answered by a decision that Congress in passing the Jones Act, was regulating an American master and servant relationship irrespective of vessels or their nationality?

## *Statement of Facts.*

The action was brought originally against two defendants.

It was discontinued as to one of them at the beginning of the trial and proceeded to trial against the other defendant, F. Jarka Company, Inc. (fol. 69).

The plaintiff's intestate, on June 13th, 1926, was employed by F. Jarka Company, Inc., the defendant, an American corporation engaged in the business of loading and unloading steamships (fols. 76, 27-28, 72, 18). Pursuant to such employment he was assisting as a longshoreman in the unloading of the steamship "Hamburg", which at the time was in the navigable waters of New York Harbor (fols. 96, 20, 103).

Plaintiff's intestate was an American citizen (fol. 73). Defendant was a Delaware corporation (fol. 72). The steamship "Hamburg" was a vessel of German registry (fol. 70).

It was conceded that the plaintiff's intestate died on July 13th, 1926, as a result of injuries received on the same day on board the steamship "Hamburg" (fol. 73).

There was introduced on the trial, evidence from which a jury could have found that the plaintiff's intestate was caused to die by the negligence of defendant, F. Jarka Company, Inc., or the negligence of its employees.

Plaintiff relied on Section 33 of the Merchant Marine Act of 1920 as interpreted by the decision of this Court in *Haverty* v. *International Stevedoring Company*, 272 U. S. 50, and claimed that this statute made the defendant liable (fols. 70, 201-202).

At the close of plaintiff's evidence, the defendant moved to dismiss "upon the ground it appears affirmatively that the negligence was the negligence of a fellow-employee of the plaintiff for which this defendant is not responsible" (fol. 201).

The trial Court after argument and consideration of the effect of *Haverty* v. *International Stevedoring Company*, 272 U. S. 50, held that Section 33 of the Merchant Marine Act of 1920 (Jones Act) did not apply to the case at bar because the accident happened on a vessel of foreign registry (fols. 206-207).

The complaint was thereupon dismissed. An exception was taken to the Court's ruling (fol. 209).

Thereafter, on appeal to the Appellate Division of the Supreme Court from the judgment entered on the dismissal of the complaint, the judgment was affirmed (fols. 253-257).

Thereafter, on appeal, by permission, to the Court of Appeals, the judgment of the Appellate Division of the

Supreme Court was affirmed on the authority of the case of "*Resigno* v. *F. Jarka Co., Inc.,* 246 N. Y. 537" (fols. 295-300). The correct citation for this case is 248 N. Y. 225.

A copy of the decision of the Court of Appeals, together with the dissenting opinion (which, however, concurred in the result), in the case of *Resigno* v. *F. Jarka Co., Inc.,* 248 N. Y. 225, may be found in the appendix of this petition.

It is apparent that the decision of the Court of Appeals in the *Resigno* case, because of which decision the judgment in the case at bar was affirmed, was based upon an interpretation of Section 33 of the Merchant Marine Act of 1920 and the case of *International Stevedoring Company* v. *Haverty,* 272 U. S. 50. It is asserted by the petitioner that the interpretation made by the Court of Appeals in the *Resigno* case and relied on for the affirmance of the judgment in the case at bar is erroneous.

Briefly, the Court of Appeals held the following:

That seamen employed as members of the crew of foreign vessels are not within the purview of Section 33 of the Merchant Marine Act of 1920; that the effect of *International Stevedoring Company* v. *Haverty,* 272 U. S. 50, was merely to put stevedores upon the same footing as members of the crew for the purpose of applying the statutory remedy and that since a member of the crew of a foreign vessel could not recover under the Merchant Marine Act for an injury occurring to him while the vessel was in the navigable waters of the United States, a longshoreman could not do so.

The dissenting opinion of Crane, *J.*, held that even if the Merchant Marine Act does not apply to members of the crews of foreign vessels while in territorial waters, American longshoremen are within the scope of the act even when working on ships of foreign registry. As Judge Crane said:

> "A longshoreman, now classed as an American seaman, does not lose the benefits of this act because he happens to be working for a few hours upon a German instead of an American ship."
>
> *Resigno* v. *F. Jarka Co., Inc.*, 248 N. Y. 225, at 242.

## *Reasons for Granting the Writ.*

1. The Court of Appeals has interpreted an Act of Congress in such a manner as to divide American longshoremen into two classes so far as their right to recover from their employers for personal injuries is concerned, viz.: those working at the time of injury on American ships and those working at the time of injury on foreign ships. Such an interpretation of an Act of Congress is not conducive to the preservation of the uniformity of the Maritime Law.

2. The decision of the Court of Appeals, although it affects immediately longshoremen only, is based on a decision of a point which has already been before the Supreme Court of the United States in the case of *Plamals* v. *S. S. Pinar Del Rio*, 277 U. S. 151, but not decided, namely: whether a member of the crew of a foreign vessel injured while the vessel is in the navigable waters of the United States may have the benefits of Section 33 of the Merchant Marine Act of 1920.

3. The matters in dispute are of vital concern to numbers of longshoremen having similar claims.

4. There is a conflict between the decisions of the Court of Appeals of the State of New York and decisions of the United States District Court for the Eastern District of New York, of the United States District Court for the Southern District of Texas, of the United States District Court for the District of Oregon and of the Supreme Court of the State of Washington. The citations of these cases appear in the brief accompanying this petition.

Respectfully submitted,

ANNA URAVIC,
*As Administratrix.*

By VERNON S. JONES,
Attorney of Record.

Dated, New York, January 16, 1930.

I hereby certify that I have examined the foregoing petition, and in my opinion it is well founded and entitled to the favorable consideration of the Court and that it is not filed for the purpose of delay.

VERNON S. JONES.

# Supreme Court of the United States.

OCTOBER TERM 1929—NO.

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ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits which were of Anton Uravic, deceased,

*Petitioner,*

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

*Respondents.*

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## *BRIEF IN SUPPORT OF THE PETITION FOR CERTIORARI.*

A reference has been made in the petition to the jurisdictional provisions, proceedings and opinions below. The facts in the case are stated in the petition.

The general proposition for which the petitioner contends is that longshoremen employed by American stevedoring companies are entitled to the benefits of Section 33 of the Merchant Marine Act of 1920 when injured on vessels of foreign registry lying within the navigable waters of the United States.

If the petitioner is right, the highest Court of New York State has denied to her a right conferred by a statute of the United States.

It is not necessary to contend and the petitioner does not contend that Section 33 of the Merchant Marine Act of 1920 applies to the members of the crews of foreign

vessels who may be injured while the vessels are in American waters.

A. *Neither the Merchant Marine Act itself nor the decision of this Court which interprets it indicates that the right of a longshoreman to recover against his employer is dependent on the registry of the vessel on which the accident takes place.*

The right of a longshoreman to recover damages against his employer on account of injuries caused by the negligence of a fellow-employee depends upon Section 33 of the Merchant Marine Act of 1920 as interpreted by the case of *International Stevedoring Company* v. *Haverty*, 272 U. S. 50.

The statute itself does not expressly make the liability of the employer depend upon the happening of the accident on a vessel. It provides as follows:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located."

With regard to longshoremen, however, this Court has held:

> "* * * that in this statute, seaman is to be taken to include stevedores employed in maritime work on navigable waters as the plaintiff was."
>
> *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, at 52.

It is not clear whether the Court meant to limit the benefits of the Merchant Marine Act to longshoremen injured on navigable waters or meant to indicate that the act was applicable "at least" to such employees. However, there is no limitation in the opinion having reference to the registry of the vessel on which the longshoreman is employed.

B. *Section 33 of the Merchant Marine Act of 1920 is designed to affect the relationship of employer and employee. It does not affect vessels as such.*

The Court of Appeals has reached its conclusion because of assumptions which, the petitioner submits, are erroneous. That Court has assumed that Section 33 of the Merchant Marine Act does not apply to members of the crew of a foreign vessel because, where they are concerned, the locus of the tort is a foreign vessel and because the act was not meant to apply to any but American vessels. From this it deduces a similar law for longshoremen.

However, Section 33 of the Merchant Marine Act makes no reference to vessels at all. It refers only to seamen and their employers and is designed to govern the master and servant relationship wherever that relationship comes within the presumptive intention of Congress.

If the Merchant Marine Act of 1920 does not apply to the members of the crew of a foreign vessel it is because Congress did not intend to legislate with regard to a relationship of master and servant which is based on a contract of employment ordinarily made under the laws of a foreign country and which exists within the United States only transiently. Although Congress, no doubt, has the power to do so, it may well be doubted that Congress did intend to affect an essentially foreign relationship with legislation of such importance where the statute contains no specific words to that effect.

However, with regard to American longshoremen, whose contracts of employment are made and whose work is performed only in the United States, it is submitted that there arises no problem involving foreign interests if the statute is applied to them as a *class* whether they are working on vessels of United States or foreign registry.

As Judge Crane said in his dissenting opinion in *Resigno* v. *F. Jarka Co., Inc.*, 248 N. Y. 225, at 240:

> "This class of specialized workers connected with maritime service is to be covered by the act of 1920 and included within its provisions; not merely those few members of the class who happen for the time being to be working upon American ships. Stevedores and longshoremen would receive very little benefit from this act of Congress were it so limited. Unless the act has this general application, a shift of a gang of longshoremen from a ship on one side of a dock to a ship on the other side, might also shift the law of responsibility. Did Congress intend to make the law of responsibility for this *class* of workmen, or did it intend to leave it to these toilers by hand to select that law? The question must answer itself."

*C. In the following cases it has been held that Section 33 of the Merchant Marine Act of 1920 is applicable in a case of a longshoreman injured on a foreign vessel in domestic waters:*

*Zarowitch* v. *F. Jarka Co., Inc.*, 21 Fed. Rep. 2nd, 187, United States District Court for the Eastern District of New York;

*Mahoney* v. *International Elevating Co., Inc.*, 23 Fed. Rep. 2nd, 130, United States District Court for the Eastern District of New York;

*Williams* v. *Oceanic Stevedoring Company*, 27 Fed. Rep. 2nd, 905, United States District Court for the Southern District of Texas;

*Peterson* v. *Independent Stevedore Company*, United States District Court, District of Oregon, March 18th, 1929; not yet reported in Fed. Rep. but found in 1929 American Maritime Cases 629;

*Philip McGinn* v. *North Coast Stevedoring Company*, 149 Wash. 1, Supreme Court of the State of Washington;

*Gustav Ranstrom* v. *International Stevedoring Company*, Supreme Court of the State of Washington, May 27, 1929, not yet reported in State Reporter but found in 277 Pac. 992.

So far as known, New York is the only jurisdiction in which a contrary rule has been laid down and this applies only to the State courts. However, on account of the importance of New York as a maritime center, the ruling of its highest Court is far-reaching in effect.

## *Conclusion.*

There are many claims of longshoremen injured prior to the passage of the Longshoremen's and Harbor Worker's Compensation Act of 1927 which are awaiting a final decision of the question involved in this petition. One of them is now awaiting decision in the United States District Court for the Southern District of New York. This is the case of *William O'Reilly* v. *Cunard S. S. Co.*

The passage of the Longshoremen's and Harbor Worker's Compensation Act of 1927 has not changed the situation essentially. That Act also governs the relationship of master and servant. The same question of its application to a longshoreman injured on a foreign ship in territorial waters is sure to be raised. Just as in the present case, the statute itself is silent on the point and it has not been decided judicially. However, the decisions of the New York Court of Appeals in *Resigno* v. *F. Jarka Co., Inc.*, 248 N. Y. 225, and in the case at bar would certainly be persuasive precedents for holding that the compensation act does not apply to longshoremen working on vessels of foreign registry situated within the navigable waters of the United States.

The importance of the present case, linked as it is with the more important one of a Federal compensation law, is at once evident.

***Review by certiorari should be allowed.***

Respectfully submitted,

VERNON S. JONES,
*Counsel for Petitioner.*

## Appendix.

248 N. Y. 225, 162 N. E. 13.

Resigno v. F. Jarka Co., Inc., et al.

Court of Appeals of New York. May 29, 1928.

CARDOZO, *C. J.*—Plaintiff, an administrator, brings this action against F. Jarka Co., Inc., a corporation carrying on the business of master stevedores, to recover damages for the death of Anthony Resigno, his son. Anthony Resigno, a stevedore employed by the defendant, was working, when his injuries were suffered, on the steamship *Hannover* in navigable waters at Hoboken, N. J. The steamship *Hannover* is owned by the North German Lloyd, and flies the flag of Germany. Plaintiff alleges that the Jarka Company, the employer, was negligent in omitting to provide his son with a safe place of work and with competent fellow-servants as well as in other particulars. The employer moves to dismiss the complaint under Civil Practice Rule 107, subdivision 2, upon the ground that the Workmen's Compensation Act of New Jersey (Laws N. J. 1911, p. 134, as amended by Laws N. J. 1913, p. 302) supplies an exclusive remedy. The plaintiff founds his right of action, first, upon the act of Congress, commonly known as the Jones Act (Act of June 5, 1920, 41 Stat. C. 250, pp. 988, 1007, § 33), and, if that be deemed inapplicable, upon a statute of New Jersey, adopted in 1848, awarding the remedy of damages where negligence results in death.

(1) "Any seaman who shall suffer personal injury in the course of his employment may, at his election,

maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain any action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." 3 Mason's U. S. Code, p. 3273, § 688 (46 USCA § 688).

The foregoing section (33) is part of a statute entitled "An act to provide for the promotion and maintenance of the American Merchant Marine, to repeal certain emergency legislation, and provide for the disposition, regulation, and use of property acquired thereunder, and for other purposes." 41 Stat. 988. Another section (39 [46 USCA § 889]) is to the effect that the act "may be cited as the Merchant Marine Act 1920."

Section 33, above quoted, is an amendment of section 20 of an act of March 4, 1915 (38 Stat. c. 153, p. 1164; Panama R. R. Co. v. Johnson, 264 U. S. 375, 389, 44 S. Ct. 391, 68 L. Ed. 748). The act last mentioned is entitled "An act to promote the welfare of American seamen in the merchant marine of the United States; to abolish arrest and imprisonment as a penalty for desertion and to secure the abrogation of treaty provisions in relation thereto, and to promote safety at sea." It amends divers provisions of the United States

Revised Statutes, some of which are again amended by the act of 1920, and also divers provisions of the act of December 21, 1898, entitled "An act to amend the laws relating to American Seamen, for the protection of such seamen, and to promote commerce." It includes a new section, numbered 20 (the parent of the present section 33) which provides:

> "That in any suit to recover damages for any injury sustained on board vessel or in its service seamen having command shall not be held to be fellow servants with those under their authority."

We hold that section 33 of the Merchant Marine Act of 1920, like its parent, section 20 of the act of 1915, is to be limited to seamen at work upon domestic vessels. We do not doubt the power of Congress to give a broader remedy. Irrespective of the nationality of the vessel, the remedy may be extended to any one who is injured within the territory of our waters. We are unable to convince ourselves that the power has been exercised. The section now before us is to be read in the setting of other acts and sections. So read, it is not susceptible of extension to any vessels but our own. As to these, it applies both at home and on the seas. At home and on the seas they are subject to the power of our government. No such range of power exists in respect of foreign vessels. Power as to these is territorial and local. Congress did not intend to give a remedy for injuries suffered on the high seas aboard a vessel of another flag. Jackson v. Archimedes (Jan. 3, 1928) 275 U. S. 463, 48 S. Ct. 164, 72 L. Ed. —; American Banana Co. v. United Fruit Co., 213 U. S.

347, 357, 29 S. Ct. 511, 53 L. Ed, 826, 16 Ann. Cas. 1047. We see no token of an intention to change the class of vessels with changes of locality. The act, when read in its setting, is true to its title, wherein its primary purpose is defined as the promotion and maintenance of the American Merchant Marine. Cf. Patterson v. The Eudora, 190 U. S. 169, 172, 23 S. Ct. 821, 47 L. Ed. 1002. It is not to be extended by words of general application to shipping not our own. Cf. The Pinar Del Rio (C. C. A.) 16 F. (2d) 984; affirmed by the United States Supreme Court May 14, 1928, 277 U. S. 151, 48 S. Ct. 457, 72 L. Ed.—, without passing on this question; The Falco (C. C. A.) 20 F. (2d) 362, 364.

A reading of related sections reinforces this conclusion. When foreign vessels are brought within the range of their prohibition, the extension is expressed. There is no resort to doubtful inference. This is true of the Revised Statutes. See, e. g., §§ 4510, 4530, 4607, 4612 (46 USCA §§ 562, 597, 709, 713); The Elswick Tower (D. C.) 241 F. 706. It is true of the act of 1915. See, e. g., sections 14, 16 (22 USCA § 258; 46 USCA § 222). It is true of the act of 1920. See, e. g., section 30, subsection P. (46 USCA § 971); sections 31, 32, 34 (46 USCA §§ 597, 599). Section 31 makes provision for the payment of part of the wages earned by seamen on board a vessel of the United States at ports where the vessel arrives. There is express statement that "this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement." The debates in the Congressional Record quoted in the briefs of counsel have

relation to this section. They do not touch the case at hand. Section 32 makes it unlawful to pay wages in advance. Again there is provision that the section shall apply to foreign vessels in our waters. Jackson v. Archimedes, supra. Next in order is section 33, the one before us for construction; it significantly omits an equivalent extension. "A few words would have stated that intention, not leaving such an important regulation to be gathered from implication." Jackson v. Archimedes, supra, quoting Sandberg v. McDonald, 248 U. S. 185, 39 S. Ct. 84, 63 L. Ed. 200. Congress had no difficulty in making its meaning plain when extension was desired. Its silence is the more telling when contrasted with its utterance.

Another signpost of intention is yet to be considered. As if to clinch the meaning, the chapter of the United States Code embodying the statutes in respect of merchant seamen ends with a section which has the label "Definitions". "In the construction of this chapter, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'seaman'." U. S. Code, § 713, c. 18, title 46; formerly U. S. R. S. § 4612. We cannot read this provision except as a statement that the intention of the Congress is to deal with domestic vessels and with those who work aboard them. The Elswick Tower, supra, and cases there cited. We do not ignore the plaintiff's argument that section 713 of the United States Code, being substantially a re-enactment of United States Revised Statutes, section 4612, is to be limited

to those sections of the chapter which were contained in the Revised Statutes before they were gathered into the Code. Cf. Mason's U. S. Code, vol. 1, p. 1 (1 to 4 USCA, p. 3). Of these, the present section (section 33 of the act of 1920, now section 688 of the Code) is not one. Even if this be so, the definition has significance. The act of 1920 did amend many provisions of the Revised Statutes, as also did its parent, the act of 1915. The provisions so amended are cognate in spirit and effect to the section now before us. We impute to Congress a willingness to mask its true intentions if we say that the acts of 1915 and 1920 were framed throughout their main provisions in subjection to the statutory definitions of "master" and "seaman", but that a single section was expected without hint of such a purpose to bear a broader meaning. The conclusion is unreasonable that the lawmakers, designing an extension, would have left us thus to struggle with silence and obscurity. A new basis of liability, a new principle of jurisdiction, will not be held to have been interjected without warning or by uncertain implication. If considerations of convenience or policy can be marshalled in aid of a contrary conclusion, there are none of them so clear and unequivocal as to have controlling value. The development of our merchant marine requires, it is said, that foreign and domestic owners compete on a basis of equality. Equality is impracticable in respect of this provision, however we construe it, for jurisdiction is lacking to define the law of remedies for foreign vessels on the seas. In the long run, the development of our merchant marine may be fostered rather than impeded by holding out to seamen employed upon our ships the inducement

of a protection withheld by our competitors. The appraisal of such tendencies is matter for the lawmakers. "That which in its immediacy is a discouragement may be part of an encouragement when seen in its organic connection with the whole." Holmes, *J.*, in Compania General de Tabacos de Filipinas v. Collector of Internal Revenue, 275 U. S. 87, 100, 48 S. Ct. 100, 105, 72 L. Ed. —. We see no reason for a departure from the definitions of a glossary embodied in related statutes and framed for the very purpose of helping to stabilize construction.

The court is unanimous in its holding that seamen in the strict or proper sense are without the purview of the act when working upon foreign vessels. Whatever division there is among us has its origin in a supposed distinction between the remedy available to such seamen and that available to stevedores. The suggestion is that, in cases of the latter order, the nationality of the vessel is to be rejected as a test. The judgment of the court is that the test does not vary with the nature of the service. Under the ruling of the Supreme Court (International Stevedoring Co. v. Haverty, 272 U. S. 50, 47 S. Ct. 19, 71 L. Ed. 157), a stevedore is in as good a position as if he were a seaman proper. We are unable to satisfy ourselves that under that decision, or by force of any consequences legitimately flowing from it, his position is even better. The fact is recalled to us in Atlantic Transport Co. v. Imbrovek, 234 U. S. 52, 62, 34 S. Ct. 733, 58 L. Ed. 1208, 51 L. R. A. (N. S.) 1157, that in bygone days the work of loading and unloading was done by members of the crew. We think the effect of International Stevedoring Co. v. Haverty is merely to put a stevedore on

the same footing as the crew for the purpose of applying the statutory remedy. True, indeed, it is that the remedies available to a stevedore may thus vary from day to day, and even from hour to hour, with the location of his labor. Distinctions of that order are not unknown to the law. They have been made familiar by rulings under the Workmen's Compensation Acts (Consol. Laws, c. 67) by which a longshoreman is given a remedy if working on a boat and denied the same remedy if working on a dock. State Industrial Commission of State of New York v. Nordenholt Corporation, 259 U. S. 263, 42 S. Ct. 473, 66 L. Ed. 933, 25 A. L. R. 1013. So under the Employers' Liability Act (45 USCA §§ 51-59; U. S. Comp. St. §§ 8657-8665) of Congress. The servant gains a remedy or loses one according to the particular service he is rendering at the very moment of the injury. Chicago, B. & Q. R. Co. v. Harrington, 241 U. S. 177, 36 S. Ct. 517, 60 L. Ed. 941. The incongruity is no greater here. Congress did not mean that, if a stevedore and a member of a crew were injured on the same vessel as a result of the same casualty, the stevedore should have a remedy and the seaman none. The act was intended to apply to both or neither.

(2) The federal act failing, there remains the statute of New Jersey which gives a cause of action for damages to appointed representatives where negligence results in death.

The Appellate Division held that the remedy under that act had been supplanted by the adoption in New Jersey of a Workmen's Compensation Act, awarding the usual system of insurance to workmen subject to its provisions. We think the holding is erroneous.

Resigno was injured while engaged in maritime work upon navigable waters. There was no power in the Legislature of New Jersey to substitute a system of workmen's compensation for the right of action for damages that was his under maritime law. There was a like defect of power to substitute such a system for the then existing right of action for the use of his survivors. The point was expressly ruled in Warren v. Morse Dry Dock & Repair Co., 235 N. Y. 445, 139 N. E. 569; Id., 262 U. S. 756, 43 S. Ct. 703, 67 L. Ed. 1217; cf. Western Fuel Co. v. Garcia, 257 U. S. 233, 240, 42 S. Ct. 89, 66 L. Ed. 210; Southern Pacific Co. v. Jensen, 244 U. S. 205, 37 S. Ct. 524, 61 L. Ed. 1086, L. R. A. 1918 C, 451, Ann. Cas. 1917 E, 900; Knickerbocker Ice Co. v. Stewart, 253 U. S. 149, 40 S. Ct. 438, 64 L. Ed. 834, 11 A. L. R. 1145; Washington v. W. C. Dawson & Co., 264 U. S. 219, 44 S. Ct. 302, 68 L. Ed. 646. A different question would be here if the Legislature had attempted to repeal the death statute altogether. What it attempted was "not to abolish every remedy, but to substitute one remedy for another." Warren v. Morse Dry Dock & Repair Co., supra. "To the extent that the substitution of a new remedy is ineffective, the old one survives."

Since the wrong was done upon the waters, the circumstance is unimportant that the death which followed was upon the land. Kursa v. Overseas Shipping Co., 217 App. Div. 775, 217 N. Y. S. 194; U. S. Shipping Board Emergency Fleet Corporation v. Greenwald (C. C. A.) 16 F. (2d) 948.

The judgment of the Appellate Division and that of the Special Term should be reversed, and the motion denied with costs in all courts.

CRANE, *J.* (concurring in result)—A motion was made by the defendant, F. Jarka Company, Inc., under rule 107, subdivision 2, of the Rules of Practice, for judgment on the pleading dismissing the complaint upon the ground that the court did not have jurisdiction of the subject of the action. The motion was granted, and the judgment of dismissal has been affirmed by the Appellate Division, one of the justices dissenting.

The complaint alleges that the defendant, F. Jarka Company, Inc., is and was a foreign corporation duly organized and existing under the laws of the state of New Jersey, maintaining an office for the regular transaction of business as stevedore in the borough of Manhattan, city and state of New York. Further allegations set forth that F. Jarka Company, Inc., under contract and agreement with the defendant, the North German Lloyd, was engaged in loading and discharging a cargo upon and from the steamship Hannover, lying afloat in navigable waters at a pier at the foot of Sixth street, city of Hoboken, state of New Jersey. The plaintiff's intestate, Anthony Resigno, was in the employ of F. Jarka Company, Inc., as a longshoreman loading and unloading the ship. The complaint then goes on to allege negligence upon the part of the employer toward this employee, which resulted in his death. It is said that the master failed to provide him with a safe place to work, to furnish him competent fellow servants; failed to warn him of latent and unknown dangers, or to properly instruct him in the performance of his duties—a common-law cause of action by a servant against his master. The facts of the accident are alleged, followed by a copy of the law of New Jersey, approved March 3, 1848 (P. L. p. 151), entitled, "An act to provide for the recovery of damages where the death of a person is

caused by wrongful act, neglect or default," the damages being recoverable by the representative of the deceased for the benefit of the widow and next of kin.

The courts of this state had jurisdiction of this cause of action, irrespective of federal statutes, and the complaint should not have been dismissed.

The Workmen's Compensation Law of New Jersey did not apply to the case, as the cause of action arose upon the navigable waters of the United States. Danielson v. Morse Dry Dock & Repair Co., 235 N. Y. 439, 139 N. E. 567; Id., 262 U. S. 756, 43 S. Ct. 703, 67 L. Ed. 1217; Washington v. W. C. Dawson & Co., 264 U. S. 219, 44 S. Ct. 302, 68 L. Ed. 646. The fact that Anthony Resigno died on land does not change the admiralty nature of the tort. Kursa v. Overseas Shipping Co., 217 App. Div. 775, 217 N. Y. S. 194; The Chiswick (C. C. A.) 231 F. 452; The Anglo-Patagonian (C. C. A.) 235 F. 92; U. S. Shipping Board Emergency Fleet Corporation v. Greenwald (1927 C. C. A. 2) 16 F. (2d) 948; Hamburg-Amerikanische Packetfahrt Aktien Gesellschaft v. Gye, 207 F. 247, 253 (1913 C. C. A. 5).

As the Workmen's Compensation Act did not apply, an action could be maintained under the New Jersey death statute (2 Comp. St. 1910, p. 1907) for common-law negligence causing death where the tort was committed upon navigable waters, and the state courts would have jurisdiction of the cause. Warren v. Morse Dry Dock & Repair Co., 235 N. Y. 445, 139 N. E. 569; Western Fuel Co. v. Garcia, 257 U. S. 233, 42 S. Ct. 89, 66 L. Ed. 210; Kursa v. Overseas Shipping Co., supra.

This complaint, therefore, stated a cause of action for common-law negligence resulting in death for which the New Jersey statute gave a right of action to the rep-

resentatives for the benefit of the widow and next of kin of the deceased. Such a cause of action could be maintained in the Supreme Court of New York state, as it had jurisdiction of the parties. For this reason, if no other, the judgments below must be reversed, and the motion denied. It will not do, however, to stop here, as evidently the plaintiff is unable to prove a cause of action without the assistance of the benefits of the federal statute. Act of June 5, 1920; 41 Stat. 1007, c. 250, § 33, which also appears in 3 Mason's United States Code Ann. of 1926, title 46, c. 18, § 688, and known as section 33 of the Jones Act (46 USCA § 688).

As the deceased was working on a German ship, the Appellate Division has held that he is to be deemed a German seaman, and that the act is intended solely for the benefit of American seamen. Although agreeing with that court that the act was intended solely for the benefit of American seamen, I cannot agree that the deceased was in any sense a part of the crew of the Hannover, and thus a German seaman.

Section 33 of chapter 250 of the Act of June 5, 1920, reads as follows:

> "Recovery for Injury to or Death of Seaman.—Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal repre-

> sentative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located. (Mar. 4, 1915, c. 8153, sec. 20, 38 Stat. 1185; June 5, 1920, c. 250, sec. 33, 41 Stat. 1007.)" 46 USCA § 688.

The appellant insists that "every seaman" includes every articled seaman of foreign ships entering our territorial waters; that this act applies to all foreign ships and their crews. He refers to the cases of Strathearn S. S. Co. v. Dillon, 252 U. S. 348, 40 S. Ct. 350, 64 L. Ed. 607, and Cunard S. S. Co. v. Mellon, 262 U. S. 100, 43 S. Ct. 504, 67 L. Ed. 894, 27 A. L. R. 1306. As stated in the opinion below, when Congress intended to apply the shipping act to foreign ships, it so stated. This was the basis of the Dillon decision. Section 31 of the act of 1920 (section 597 of Mason's Code), "Payment at ports," provided:

> "That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement."

Section 33 makes no such application, and it is natural to assume, therefore, that Congress did not intend to extend its provisions to foreign ships. The object of the act was to provide for the promotion and mainte-

nance of the American Merchant Marine (Panama R. Co. v. Johnson, 264 U. S. 375, page 389, 44 S. Ct. 391, 68 L. Ed. 748), and I fail to see how the American Merchant Marine would be benefited by applying the act to the crews of foreign ships. Stewart v. Pacific Steam Navigation Co. (D. C.) 3 F. (2d) 329, did not directly decide this point. See The Navarino (D. C.) 7 F. (2d) 743.

However, even though the Jones Act does not apply to foreign ships and their crews while in territorial waters, it does not follow that longshoremen now considered to be American seamen are not within the purposes of the act, even when working on ships of other nationalities.

Longshoremen have become a class by themselves. They are connected with the local port, and do the work of loading and unloading of ships of all nationalities entering that port. They are seldom, if ever, employed by the ship or its owners, but are usually in the employ of a boss stevedore. Such was the case here. Resigno was employed by F. Jarka Company, Inc. This was a corporation doing stevedore business. Resigno had no relations whatever with the ship. It did not employ him, and owed him none of the duties arising out of the relationship of master and servant. F. Jarka Company, Inc., was the employer, and owed him the duties imposed by the common law upon masters. For a violation of those duties the shipowners would not be liable. The Auchenarden (D. C.) 100 F. 895; West Indian & P. S. S. Co. v. Weibel, 113 F. 169, 51 C. C. A. 116; Imbrovek v. Hamburg-American Steam Packet Co. (D. C.) 190 F. 229; Dobrin v. Mallory S. S. Co. (D. C.) 298 F. 349, 352. The longshoreman thus employed by a stevedore may work on

many ships in the course of a day. Would he change his nationality every time to that of the ship on which he happened to be working? Such a statement strikes us at once as unreasonable. In fact he is not a seaman, but merely classed as such to come within the benefits of the Jones Act. Resigno was a resident of New Jersey, worked in New Jersey, and was employed by a domestic corporation doing stevedoring work. He never formed or became part of the crew of any ship, nor was he at the time in question employed by the ship or its owners. That he was classed as a seaman was due entirely to the intention of Congress as read into this provision of section 33, passed for the purpose of advancing the interests of the Merchant Marine, and to benefit American seamen. His work was so closely connected with shipping, and became so necessary to the loading and unloading of vessels, that an act passed in the interests of American seamen could hardly have been intended to exclude him. This is the ruling in the Haverty Case. International Stevedoring Co. v. Haverty, 272 U. S. 50, 47 S. Ct. 19, 71 L. Ed. 157. When Mr. Justice Holmes writes: "It is true that for most purposes, as the word is commonly used, stevedores are not 'seamen.' But words are flexible," this is merely the justice's stylistic way of saying that the Act of June 5, 1920, was intended to include longshoremen among the class to be benefited by the act. The work of longshoremen was described in Atlantic Transport Co. of West Virginia v. Imbrovek, 234 U. S. 52, 62, 34 S. Ct. 733, 735, 58 L. Ed. 1208, 51 L. R. A. (N. S.) 1157, as follows:

> "Formerly the work was done by the ship's crew; but, owing to the exigencies of increasing commerce and the demand for rapidity and special

> skill, it has become a specialized service devolving upon a class 'as clearly identified with maritime affairs as are the mariners.'"

This class of specialized workers connected with maritime service is to be covered by the act of 1920 and included within its provisions; not merely those few members of the class who happen for the time being to be working upon American ships. Stevedores and longshoremen would receive very little benefit from this act of Congress were it so limited. Unless the act has this general application, a shift of a gang of longshoremen from a ship on one side of a dock to a ship on the other side might also shift the law of responsibility. Did Congress intend to make the law of responsibility for this *class* of workmen, or did it intend to leave it to these toilers by hand to select that law? The question must answer itself.

This application of the act of June 5, 1920, has been made in Zarowitch v. F. Jarka Co. (D. C.) 21 F. (2d) 187, where Judge Sheppard said:

> "There was no privity between the ship and plaintiff, who was merely a harbor worker, in the service at the time of the Jarka Company, and it would seem a far cry, in view of these facts, to classify the plaintiff as a foreign seaman. The provisions of the Jones (Merchant Marine) Act, extending the rights and remedies applicable to seamen to stevedores, did not invest the latter with the character of seamen, but the statutes by judicial interpretation have been held to include marine workers, and the mere incident of the locus in quo of the work performed, though the test of

> admiralty jurisdiction in tort, does not change the status of such employee from stevedore to seaman."

This was followed by Judge Moscowitz in Mahoney v. International Elevating Co., 23 F. (2d) 130, in the District Court for the Eastern District of New York, November, 1927 (not yet reported), and by the Appellate Division, Second Department, in Muti v. Hoey, decided November 4, 1927, and reported in 221 App. Div. 688, 224 N. Y. S. 662. In Clark v. Montezuma Transportation Co., 217 App. Div. 172, 216 N. Y. S. 295, upon which so much stress is made, the plaintiff was part of the ship's crew, and was employed by the ship. He ceased for the time being to be an American seaman. See, also, the reasoning in Rainey v. New York & P. S. S. Co. (C. C. A.) 216 F. 449, L. R. A. 1916A, 1149.

In behalf of the respondent, the suggestion has been made that we are forced to narrow the application of this act to longshoremen working on American vessels, by reason of the section of the law relating to merchant seamen containing definitions, schedule, and tables found in section 713 of chapter 18, title 46, volume 3, Mason's United States Code Ann. 1926, p. 3279. It reads as follows:

> "Definitions, Schedule, and Tables.—In the construction of this chapter, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'master' thereof; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be

deemed and taken to be a 'seaman'; and the term 'vessel' shall be understood to comprehend every description of vessel navigating on any sea or channel, lake or river, to which the provisions of this chapter may be applicable, and the term 'owner' shall be taken and understood to comprehend all the several persons, if more than one, to whom the vessel shall belong."

I do not read this section as containing any such limitation. The purpose was expansion, not limitation. It intended to include in the word "seamen" all those working on board an American ship who might not ordinarily be classed as seamen, such, for illustration, as an orchestra owner. The Sea Lark (D. C.) 14 F. (2d) 201, and employments there cited. It did not, however, necessarily exclude, or intend to exclude, all others from being American seamen. A sailor salvaging a foreign ship in domestic waters would not cease to be, I take it, when aboard such ship, an American seaman entitled to the benefits of the act. A longshoreman, now classed as an American seaman, does not lose the benefits of this act because he happens to be working for a few hours upon a German, instead of an American, ship. The act was for the benefit of the seamen, not solely for the benefit of the ship or the shipowners.

This Act of June 5, 1920, about which we are writing, section 33, gives to the personal representative of any seaman whose death has been caused by a personal injury an action for damages at law, with the right of trial by jury. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides, or in which his particular office is located.

That such provisions did not exclude the jurisdiction of the Supreme Court of this state in a proper case, see Patrone v. Howlett, Inc., 237 N. Y. 394, 143 N. E. 232.

If the above reasons be sound, it follows that the judgments below should be reversed, and the motion for judgment on the pleading be denied, with costs in all courts.

POUND, ANDREWS, LEHMAN, KELLOGG and O'BRIEN, *JJ.*, concur with CARDOZO, *C. J.*

CRANE, *J.*, concurs in result in separate opinion.

Judgments reversed, etc.

FILE COPY

SEP 5

# Supreme Court of the United States

OCTOBER TERM, 1929—No. 32

ANNA URAVIC, as administratrix of the goods, chattels and credits which were of Anton Uravic, deceased,

*Petitioner,*

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

*Respondents.*

## *BRIEF FOR PETITIONER.*

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# Supreme Court of the United States

OCTOBER TERM, 1929—NO. 581.

---

ANNA URAVIC, as administratrix of the goods, chattels and credits which were of Anton Uravic, deceased,

*Petitioner*,

—against—

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

*Respondents.*

---

## *BRIEF FOR PETITIONER.*

### I. *Jurisdiction.*

This case comes here on a writ of certiorari to the Supreme Court of the State of New York pursuant to the provisions of the United States Code, Title 28, Section 344 (b). The petition was filed on the 18th day of January, 1930, and granted on the 3rd day of March, 1930.

### II. *Opinions Below.*

The writ seeks to review a final judgment of the Court of Appeals of the State of New York entered on October 22nd, 1929, affirming a judgment of the Supreme Court of the State of New York dismissing the complaint in the action.

Following the judgment of the Court of Appeals and pursuant to an order of that court, the record and the

proceedings in the Court of Appeals was remitted to the Supreme Court of the State of New York for the County of Kings, where the judgment of the Court of Appeals was made the judgment of the Supreme Court. The order remitting the record appears at folios 299-300 of the record filed herein.

The Court of Appeals wrote no opinion. However, in affirming the judgment below it did so on the authority of "*Resigno* v. *F. Jarka Co., Inc., 246 N. Y. 537*". The correct citation for that case is 248 N. Y. 225.

The judgment of the Court of Appeals appears at page 99 of the record. The decision is reported at 252 N. Y. 530.

The trial Court wrote no opinion. However, on the trial there was extended oral argument between the Court and trial counsel, which shows that the dismissal was on a ground involving a federal question. The argument on the dismissal appears on pages 67-70 of the record.

## III. *Statement of Facts.*

The action was brought originally against two defendants.

It was discontinued as to one of them at the beginning of the trial and proceeded to trial against the other defendant F. Jarka Company, Inc. (fol. 69).

The plaintiff's intestate, on June 13th, 1926, was employed by F. Jarka Company, Inc., the defendant, an American corporation engaged in the business of loading and unloading steamships (fols. 76, 27-28, 72, 18). Pursuant to such employment he was assisting as a longshoreman in the unloading of the steamship "Hamburg",

which at the time was in the navigable waters of New York Harbor (fols. 96, 20, 103).

Plaintiff's intestate was an American citizen (fol. 73). Defendant was a Delaware corporation (fol. 72). The steamship "Hamburg" was a vessel of German registry (fol. 70).

It was conceded that the plaintiff's intestate died on July 13th, 1926, as a result of injuries received on the same day on board the steamship "Hamburg" (fol. 73).

On the trial there was evidence from which a jury could have found that the plaintiff's intestate was caused to die by the negligence of defendant F. Jarka Company, Inc., or the negligence of its employees.

Plaintiff relied on Section 33 of the Merchant Marine Act of 1920 as interpreted by the decision of this Court in *Haverty* v. *International Stevedoring Company*, 272 U. S. 50, and claimed that this statute made the defendant liable (fols. 70, 201-202).

At the close of plaintiff's evidence, the defendant moved to dismiss "upon the ground it appears affirmatively that the negligence was the negligence of a fellow-employee of the plaintiff for which this defendant is not responsible" (fol. 201).

The trial Court, after argument and consideration of the effect of *Haverty* v. *International Stevedoring Company*, 272 U. S. 50, held that Section 33 of the Merchant Marine Act of 1920 (Jones Act) did not apply to the case at bar because the accident happened on a vessel of foreign registry (fols. 206-207).

The complaint was thereupon dismissed. An exception was taken to the Court's ruling (fol. 209).

Thereafter, on appeal to the Appellate Division of the Supreme Court from the judgment entered on the

dismissal of the complaint, the judgment was affirmed (fols. 253-257).

Thereafter, on appeal, by permission, to the Court of Appeals, the judgment of the Appellate Division of the Supreme Court was affirmed on the authority of the case of *"Resigno* v. *F. Jarka Co., Inc., 246 N. Y. 537"* (fols. 295-300). The correct citation for this case is 248 N. Y. 225.

In the case of *Resigno* v. *F. Jarka Co., Inc.*, the Court of Appeals said at page 230:

> "We hold that section 33 of the Merchant Marine Act of 1920, like its parent, section 20 of the act of 1915, is to be limited to seamen at work upon domestic vessels. We do not doubt the power of Congress to give a broader remedy. Irrespective of the nationality of the vessel, the remedy may be extended to any one who is injured within the territory of our waters. We are unable to convince ourselves that the power has been exercised."

and on page 233:

> "The court is unanimous in its holding that seamen in the strict or proper sense are without the purview of the act when working upon foreign vessels. Whatever division there is among us has its origin in a supposed distinction between the remedy available to such seamen and that available to stevedores. The suggestion is that in cases of the latter order, the nationality of the vessel is to be rejected as a test. The judgment of the court is that the test does not vary with the nature of the service."

In the *Resigno* case, Judge Crane, who concurred in the result, dissented from the opinion of the majority

so far as it dealt with longshoremen. Judge Crane said at page 239:

> "However, even though the Jones Act does not apply to foreign ships and their crews while in territorial waters, it does not follow that longshoremen now considered to be American seamen are not within the purposes of the act, even when working on ships of other nationalities."

## IV. *Questions Involved.*

1. Whether Section 33 of the Merchant Marine Act of June 5th, 1920, commonly referred to as the Jones Act, applies in an action between a plaintiff, who is the personal representative of a deceased American longshoreman, and a defendant, which is an American stevedoring company, and was the employer of the plaintiff's intestate, where the longshoreman was killed through the negligence of the defendant or of its employees while he was working on a vessel of foreign registry lying at the time in navigable waters of the United States, there being no privity of contract between the plaintiff's intestate and the owner of the vessel. In other words, does the happening of the accident on a foreign vessel mean that it happens on foreign territory?

2. If so, has the Jones Act any extra-territorial application?

3. Can both these questions be answered by a decision that Congress in passing the Jones Act, was regulating an American master and servant relationship irrespective of vessels or their nationality?

## POINT I.

**Neither the Merchant Marine Act itself nor the decision of this Court which interprets it indicates that the right of a longshoreman to recover against his employer is dependent on the registry of the vessel on which the accident takes place.**

The right of a longshoreman to recover damages against his employer on account of injuries caused by the negligence of a fellow-employee depends upon Section 33 of the Merchant Marine Act of 1920 as interpreted by the case of *International Stevedoring Company* v. *Haverty*, 272 U. S. 50.

The statute itself does not expressly make the liability of the employer depend on the happening of the accident on a vessel. It provides as follows:

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall

> be under the court of the district in which the defendant employer resides or in which his principal office is located."

With regard to longshoremen, however, this Court has held:

> "* * * that in this statute, seaman is to be taken to include stevedores employed in maritime work on navigable waters as the plaintiff was."
>
> *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, at 52.

The only limitation, therefore, which this Court has placed upon the right of longshoremen to recover under Section 33 of the Merchant Marine Act, is that the longshoreman must be employed in maritime work on navigable waters. This, no doubt, follows from the definition of the act as an amendment of the existing maritime law. *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375.

There is nothing in the opinion limiting the application of the statute to accidents happening to longshoremen employed in maritime work on vessels of a particular registry.

Indeed, the opinion does not say that the maritime work must be performed on a vessel at all. It is sufficient if it be performed on navigable waters.

It is not beyond imagination that the work of a seaman may be done while he is in the sea itself. *Raolaslavic* v. *New York Central R. R. Co.*, 245 N. Y. 91.

## POINT II.

**Section 33 of the Merchant Marine Act of 1920 is designed to affect the relationship of employer and employee. It does not affect vessels as such.**

The Court of Appeals has reached its conclusion because of assumptions which, the petitioner submits, are erroneous. That Court has assumed that Section 33 of the Merchant Marine Act does not apply to members of the crew of a foreign vessel because, where they are concerned, the locus of the tort is a foreign vessel and because the act was not meant to apply to any but American vessels. From this it deduces a similar law for longshoremen.

However, Section 33 of the Merchant Marine Act makes no reference to vessels at all. It refers only to seamen and their employers and is designed to govern the master and servant relationship wherever that relationship comes within the presumptive intention of Congress.

In *Panama Railroad Co.* v. *Johnson*, 264 U. S. 375, Mr. Justice Van Devanter, writing for the Court, said of Section 33 of the Jones Act, at page 387:

> "The statute is concerned with the relative rights and obligations of seamen and their employers arising out of personal injuries sustained by the former in the course of their employment."

In *Jamison* v. *Encarnacion*, 281 U. S. 635, this Court held that the Federal Employers' Liability Act, which

by Section 33 of the Merchant Marine Act is made a part of the maritime law,

> "was adopted for the relief of a large class of persons employed in hazardous work in the service described. It abrogates the common law rule that makes every employee bear the risk of injury or death through the fault or negligence of fellow servants and applies the principle of *respondeat superior* (Sec. 1), eliminates the defense of contributory negligence and substitutes a rule of comparative negligence (Sec. 3), abolishes the defense of assumption of risk where the violation of a statute enacted for the safety of employees is a contributing cause (Sec. 4) and denounces all contracts, rules and regulations calculated to exempt the employer from liability created by the Act. (Sec. 5.)"

It would appear, therefore, that Section 33 of the Merchant Marine Act is primarily a master and servant statute. It is concerned with vessels incidentally and only because such employment is usually carried on on board vessels. Such an incidental connection of vessels to the subject matter of the employment should not give rise to the conclusion that the registry of the vessel on which the accident takes place determines the application of the statute.

If the Merchant Marine Act of 1920 does not apply to the members of the crew of a foreign vessel it is because Congress did not intend to legislate with regard to a relationship of master and servant which is based on a contract of employment ordinarily made under the laws of a foreign country and which exists within the United States only transiently. Although Congress, no

doubt, has the power to do so, it may well be doubted that Congress did intend to affect an essentially foreign relationship with legislation of such importance where the statute contains no specific words to that effect.

*Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348;
*Sandberg* v. *McDonald*, 248 U. S. 185.

However, with regard to American longshoremen, whose contracts of employment are made and whose work is performed only in the United States, it is submitted that there arises no problem involving foreign interests if the statute is applied to them as a *class* whether they are working on vessels of United States or foreign registry.

*Patterson* v. *Bark Endora*, 190 U. S. 169.

As Judge Crane said in his dissenting opinion in *Resigno* v. *F. Jarka Co., Inc.*, 248 N. Y. 225, at 240:

> "This class of specialized workers connected with maritime service is to be covered by the act of 1920 and included within its provisions; not merely those few members of the class who happen for the time being to be working upon American ships. Stevedores and longshoremen would receive very little benefit from this act of Congress were it so limited. Unless the act has this general application, a shift of a gang of longshoremen from a ship on one side of a dock to a ship on the other side, might also shift the law of responsibility. Did Congress intend to make the law of responsibility for this *class* of workmen, or did it intend to leave it to these toilers by hand to select that law? The question must answer itself."

## POINT III.

**The weight of authority of the decided cases in the inferior Courts is that Section 33 of the Merchant Marine Act of 1920 is applicable in the case of a longshoreman injured or killed on a foreign vessel lying in domestic waters.**

The following is a list of the cases so holding:

*Zarowitch* v. *F. Jarka Co., Inc.*, 21 Fed. Rep. 2nd, 187, United States District Court for the Eastern District of New York;

*Mahoney* v. *International Elevating Co., Inc.*, 23 Fed. Rep. 2nd, 130, United States District Court for the Eastern District of New York;

*Williams* v. *Oceanic Stevedoring Company*, 27 Fed. Rep. 2nd, 905, United States District Court for the Southern District of Texas;

*Peterson* v. *Independent Stevedore Company*, United States District Court, District of Oregon, March 18th, 1929; not yet reported in Fed. Rep. but found in 1929 American Maritime Cases 629;

*Philip McGinn* v. *North Coast Stevedoring Company*, 149 Wash. 1, Supreme Court of the State of Washington;

*Schotis* v. *North Coast Stevedoring Co.*, Superior Court, State of Washington, found in 1928 American Maritime Cases 616;

*Gustav Ranstrom* v. *International Stevedoring Company*, Supreme Court of the State of

Washington, May 27, 1929, not yet reported in State Reporter but found in 277 Pac. 992.

So far as known, New York is the only jurisdiction in which a contrary rule has been laid down.

The decision in *Resigno* v. *F. Jarka Co., Inc.*, 248 N. Y. 225, has been followed in the case of *William O'Reilly* v. *Cunard Steamship Company* in the United States District Court for the Southern District of New York. That case was decided on July 20, 1928, and is now on appeal to the Circuit Court of Appeals for the 2nd Circuit.

## *LAST POINT.*

***The judgment of the Court of Appeals and the judgment entered on its remittitur by the Supreme Court for Kings County should be reversed.***

New York, N. Y., August 27, 1930.

Respectfully submitted,

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# SUPREME COURT OF THE UNITED STATES

October Term, 1929.

No. 32

ANNA URAVIC, as Administratrix of the goods, chattels and credits which were of ANTON URAVIC, deceased,

*Petitioner,*

*against*

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

*Respondents.*

**Brief in Behalf of Respondent in Opposition to Petition for Certiorari.**

ERNIE ADAMSON,
*For Respondent.*

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1929—No. 581.

ANNA URAVIC, as Administratrix of the Goods, Chattels and Credits, which were of Anton Uravic, Deceased,

Petitioner,

against

F. JARKA COMPANY, Inc., and UNITED AMERICAN LINE, Inc.,

Respondents.

## I.

### Jurisdiction.

Petitioner is proceeding under the provisions of the United States Code, Section 344 (b) Title 28. Unless the record shows that the state courts denied petitioner a right or benefit claimed by virtue of an Act of Congress the petition should be denied.

## II.

### Resume of Facts.

The state courts rendered no opinions. We have only the orders of dismissal and affirmance. The record discloses that the facts briefly stated are as follows:

Anton Uravic, a longshoreman, employed by respondent, was on the 13th day of July, 1926, working upon a German steamship in the Port of New York. As a regular part of his work, Uravic was assisting in the movement of certain drafts of cargo from the hold of the German steamship to the dock. While engaged in this work, Uravic's fellow workers allowed one of these heavy drafts to strike him, resulting in death (31-66). The question of whether this was done negligently or deliberately is not material or relevant in this proceeding and no discussion will be had on this point.

Anna Uravic, as administratrix, commenced an action at common law in the Supreme Court of the State of New York, Second Judicial Department, by summons and complaint served on November 1, 1926, for damages in the sum of $50,000.00 (6). The action was originally instituted against F. Jarka & Co., Inc., and United American Line, Inc., but at the trial, petitioner discontinued as against the latter. No right or benefit by virtue of an Act of Congress was claimed by petitioner until day of the trial, March 30, 1927, at which time plaintiff's counsel informed the Court orally that the action was "under the Jones Act exclusively" (24).

Petitioner proceeded with the presentation of testimony before the Court and a jury. At the conclusion of petitioner's case, the Court, after having heard all the testimony, dismissed the complaint upon its merits and after due notice to opposing counsel and in compliance with the rules of practice of the Trial Court, an order was entered reading in part as follows (19):

> "* * * the close of plaintiff's case, the defendant F. Jarka & Co., Inc., having moved to dismiss the complaint herein upon the ground that the plaintiff has failed to make out a cause of action against said defendant, * * *"
>
> "Ordered that the said motion be and the same is hereby granted, and the complaint of the plaintiff is hereby dismissed upon the merits."

Thereafter, on appeal to the Appellate Division of the Supreme Court, the judgment was affirmed. An appeal was then taken to the Court of Appeals, which resulted in another affirmance. The Court of Appeals wrote no opinion, but by memorandum merely said:

> "On the authority of *Resigno v. Jarka,* 248 N. Y. 225."

Petition for writ of certiorari was served upon respondents' counsel January 21, 1930.

## Questions Presented.

The only question presented to the Court by this petition is: Did the State Courts deny to this petitioner any right or benefit claimed by virtue of an Act of Congress?

The question of the applicability of Section 33 of the Jones Act to this particular case is a collateral question which should not be considered until the former question is carefully considered and determined. If the record does not disclose upon its face that petitioner was deprived by the State Courts of some right or benefit claimed by virtue of an Act of Congress, the petition should be denied.

If the first question is determined affirmatively by the Court, then it should proceed to consider the second question. Unless the Court is convinced that Section 33 of the Jones Act is applicable to this particular case and that the final result in this case would be different, the petition should be denied.

In other words, this is an action at common law in the Supreme Court of the State of New York, and the Trial Court in the final analysis is the tribunal wherein the sufficiency or insufficiency of the evidence must be weighed and determined.

**Petitioner's Reasons for Granting the Writ.**

The petition sets forth four reasons for granting the writ. One of these is founded upon an alleged conflict of decisions which will be discussed elsewhere in this brief. Another reason is founded upon the decision by this Court in *Plamals v. S. S. Pinar Del Rio,* 277 U. S. 151.

The two remaining reasons may be briefly considered and eliminated. Since July 1st, 1927, longshoremen have been subject to the provisions of the *Longshoremen and Harbor Workers' Compensation Act.* No common-law actions for damages such as the one at bar have originated since that date. The case at bar is one of the very few which are still in litigation. As a matter of fact respondent has knowledge of only seven such cases now pending. These pending cases would have gone to trial before this time if the plaintiffs had been diligent.

In regard to the question of uniformity of maritime

law, the attention of the Court should be directed to the fact that the distinction between a longshoreman injured upon a dock and another longshoreman injured upon a ship is recognized even under the *Longshoremen and Harbor Workers' Act.* In one instance the accident would be subject to the jurisdiction of the State Commission, and in the second instance, the accident would be subject to the jurisdiction of the Federal Commission. Congress evidently considered all these facts before enacting the *Longshoremen and Harbor Workers'* bill into law. Petitioner seems to be laboring under the impression that through some action of this Court, the law affecting longshoremen might be standardized so as to apply in all places and under all circumstances.

At this point we wish to call the attention of the Court to the statement contained in the first paragraph on page 14 of petitioner's brief, which refers to "many claims of longshoremen injured prior to the passage of the Longshoremen and Harbor Workers' Compensation Act of 1927" and also refers particularly to the case of *William O'Reilly v. Cunard S. S. Co.* as being one of the more important cases now pending in the Southern District of New York. This petition verified by counsel on January 16, 1930, indicates careless consideration of the facts set forth. The records of the United States District Court of the Southern District of New York show that the *O'Reilly* case came on for trial before the Hon. William Bondy, D. J., and a jury on January 24, 1927. The Court charged the jury as follows:

> "Now, you gentlemen, having found the facts, will have to apply the law as the Court gives

> it to you; and the Court charges you that this defendant is not responsible for any negligence of the fellow servants of the plaintiff. If you find that the plaintiff was hurt through the negligence of the fellow servants of this plaintiff, then the defendant is not responsible for that negligence of the fellow servants causing the injury."

The jury brought in a verdict for the defendant and upon motion by plaintiff's counsel to set aside the verdict the Court rendered the following opinion:

> "The decision of this motion having been withheld with consent of counsel pending the decision of the New York Court of Appeals in *Resigno v. F. Jarka Co., Inc.*, and that decision having been rendered May 29, 1928 (248 N. Y. 225), the motion is denied. See also *Plamals v. S. S. Pinar Del Rio*, U. S. Supreme Court May 14, 1928, U. S. Circuit Court of Appeals, 16 Fed. 2nd 362; *Zarowich v. F. Jarka Co., Inc.*, 21 Fed. 2nd 187; *Mahoney v. International Env. Co.*, 1928 A. M. C. 154; *Schottes v. North Coast Navigation Co.*, 1928 A. M. C. 616."

Clearly petitioner's counsel is not aware that the United States District Court of the Southern District of New York has adopted the rule announced by the New York Court of Appeals in *Resigno v. F. Jarka Co., Inc., supra.*

**Law and Argument.**

Petitioner relies upon the following decisions in support of the alleged conflict of decisions.

> *Zarowitch v. F. Jarka Co., Inc.*, 21 Fed. Rep. 2nd 187, United States District Court for the Eastern District of New York.

*Mahoney v. International Elevating Co., Inc.*, 23 Fed. Rep. 2nd 130, United States District Court for the Eastern District of New York.
*Williams v. Oceanic Stevedoring Company*, 27 Fed. Rep. 2nd 905, United States District Court for the Southern District of Texas.
*Peterson v. Independent Stevedore Company*, United States District Court, District of Oregon, March 18th, 1929; not yet reported in Fed. Rep. but found in 1929 American Maritime Cases 629.
*Philip McGinn v. North Coast Stevedoring Company*, 149 Wash. 1, Supreme Court of the State of Washington.
*Gustav Ranstrom v. International Stevedoring Company.*

The *Zarowich* decision, *supra*, was merely the determination of a motion for a new trial. The case is now upon the calendar awaiting trial.

The *Mahoney* case, *supra*, was settled amicably by the parties and counsel is informed that no appeal has been taken in that case.

The decision in *Williams v. Oceanic Stevedoring Company, supra*, was on a motion and counsel has been unable to ascertain whether an appeal has been taken.

The *Peterson* decision, *supra*, was merely the determination of a motion.

The decision of the Supreme Court of the State of Washington in *Gustav Ranstrom v. International Stevedoring Company, supra*, was a final determination, but, so far as the question at bar is concerned, it is predicated upon the decision in *Philip McGinn v. North Coast Stevedoring Company, supra.*

The decisions in the *Zarowich* and *Mahoney* cases, *supra,* appear to constitute the foundation for the decision in *Williams v. Oceanic Stevedoring Company, supra,* and *Peterson v. Independent Stevedore Company, supra,* as well as the two cases decided by the Supreme Court of the State of Washington. None of these District Court cases was a final determination and so far as the question at bar is concerned, the only final determination worthy of the consideration of this Court is the case of *Philip McGinn v. North Coast Stevedoring Company.* The circumstances disclosed by the decision in that case seem to indicate: That upon the trial, verdict was rendered for plaintiff, but upon appeal to the Supreme Court of the State of Washington, the judgment was reversed on account of the failure of the Court to properly charge the jury with regard to the assumption of risk by the plaintiff. It is true that the Court also held in disposing of a collateral question:

> "A stevedore is entitled to the benefits of Section 33 of the Merchant Marine Act."

The Court also said in substance:

> The Supreme Court of this state determines for itself the law within its jurisdiction and is not bound to follow the Federal Supreme Court.

This decision is the only one cited by petitioner which could be considered as final and the principal question raised by the petition at bar is passed upon collaterally in such a manner as to leave a doubt.

The *Ranstrom* case, *supra,* which is predicated directly upon the *McGinn* case, involved serious questions of fact, one of the Justices of the Supreme Court of Washington dissenting, as follows:

> "Tolman, J.: 'As I see the facts, the evidence was insufficient to take the case to the jury. I therefore dissent.'"

The majority opinion deals with many questions and among them will be found the following language:

> "The principal question raised is whether the Seamen's Act paragraph 33 applies. The authorities from other jurisdictions seem to be divided on this question, and at the time of appeal had not been decided in this state, but this Court is now committed to the doctrine that in cases such as we have here, the Act applies. (Refers to *McGinn* decision.)"

Petitioner seems to be under the impression that the Jones Act is complete in itself, and that it supercedes entirely the common law of the several states. This we submit is an erroneous view. The act by its terms specifically reserves to the plaintiff the right to proceed at common law unmodified, or to proceed at common law as modified by the Jones Act. In the case at bar, petitioner instituted an action at common law and made no claim whatever to any right or benefit under an Act of Congress. It was not until the day of the trial that the petitioner's counsel informed the Court orally:

> "This is an action under the Jones Act exclusively."

If it can be said that petitioner had a right to proceed in that manner, the common law of the State of New York must still govern the procedure and rights of the parties, except in so far as the Jones Act might effect a modification, if that Act of Congress does apply. Our assertion that the Jones Act

modifies instead of supercedes the common law is well supported by the language used by this Court in deciding the case of *Engel v. Davenport*, 271 U. S. 816:

> "It is settled by the decision in *Panama R. Co. v. Johnson*, 264 U. S. 375, 68 L. Ed. 748, 44 Sup. Ct. Rep. 391, that S. 33 of the Merchant Marine Act is an exercise of the power of Congress to alter or supplement the martime law by changes that are countrywide and uniform in operation; that it brings into the maritime law new rules drawn from the Employers' (36) Liability Act and its amendments—adopted by the general reference to 'all statutes of the United States modifying or extending the common law rights or remedy in cases of personal injuries to railway employees,'—and 'extends to injured seamen a right to invoke, at their election, either the relief accorded by the old rules or that provided by the new rules'; that is, that it grants them, as an alternative, the common-law remedy of an action 'to recover compensatory damages under the new rules as distinguished from the allowances covered by the old rules,' which, as a modification of the maritime law, may be enforced through appropriate proceedings in personam on the common-law side of the courts."

This Court also said in the same decision:

> "* * * And, having been brought after the passage of the Merchant Marine Act, we think the suit is to be regarded as one founded on that act, in which the petitioner, instead of invoking, as he might, the relief accorded him by the old maritime rules, has elected to seek that provided by the new rules in an action at law based upon negligence—in which he not only assumes the burden of proving negligence, but also, under

> the Employers' Liability Act, subjects himself to a reduction of the damages in proportion to any contributory negligence on his part." * * *

Thus, in the case at bar, we must bear in mind that the petitioner first instituted an action at common law unmodified by any Federal Statute, then on the day of the trial claimed orally a right or benefit by virtue of an Act of Congress. The petitioner as this Court has very well said, assumed the burden of establishing the necessary degree of negligence on the part of the employer. The Trial Court dismissed the complaint because of petitioner's failure to establish these necessary facts.

The *Pinar Del Rio* case, *supra*, has been referred to several times by petitioner and in this brief. That case is also discussed at length in the decision by the New York Court of Appeals in the *Resigno* case, *supra*. On account of the importance of the Pinar Del Rio decision, this Court should not only review its own decision, but also that of the Circuit Court of Appeals, 16 Fed. (2d) 984, wherein the Circuit Court of Appeals for the Second Circuit recognized in no uncertain terms the rule laid down by the Courts of the State of New York as follows:

> "Whether this section applies at all to foreign vessels within our territorial waters has in our judgment been well discussed in *Clark v. Montezuma, etc., Co.*, 217 App. Div. 172, 216 N. Y. S. 295. * * *"

The *Montezuma* case, *supra*, holds that a foreign ship lying in our territorial waters is not subject to regulation and control by Acts of Congress which deal with the rights of seamen.

In this connection, attention of the Court is also di-

rected to the decision of Campbell, D. J., in *The Seirstad,* 27 Fed. (2d) 982. The Court among other things holds:

> "The question here presented has been passed upon in *Clark v. Montezuma Transportation Co., supra, and Resigno v. F. Jarka Co., Inc.*, 248 N. Y. 225, 162 N. E. 13, decided by the Court of Appeals of the State of New York, May 29, 1928, both of which are actions in personam and as *Clark v. Montezuma Transportation Company, supra,* has been cited with approval by our own Circuit Court of Appeals, and its doctrine affirmed by the State Court of Appeals, I feel constrained to hold that, while the Congress undoubtedly had power to give the remedy of the Jones Act to any seaman who is injured within the territory of our waters, irrespective of the nationality of the vessel on which the injury is received, and provisions of Section 33 of the Jones Act are limited to seaman at work upon domestic vessels."

It, therefore, appears that no conflict exists between the recent decisions of the United States District Court of the Eastern District of New York, and the Southern District of New York, on one hand, and the State Courts on the other hand.

The disposition of the *O'Reilly* case in the Southern District and the *Seirstad* case in the Eastern District, indicates that the United States District Judges, in those districts, are now adopting the views laid down by the New York Court of Appeals.

The Supreme Court of the State of Washington was no doubt mislead by the early decisions in the Eastern District of New York, in the *Zarowich* and *Mahoney* cases. If the Supreme Court of the State of Washington should insist upon its present interpretation of the

Jones Act as applied to the common law of that state, and the Court of Appeals of the State of New York should tenaciously abhere to its present construction, as applied to the common law of the State of New York, that situation would not in itself constitute a ground for review by this Court to harmonize those different constructions of the common law in different states. The Supreme Court of Washington has said in the *McGinn* case, *supra,* that it is not bound to recognize the announcements of the United States Supreme Court, relating to laws entirely within that state.

Returning to the primary question, we respectfully submit that an attempt to harmonize the decisions of the Supreme Court of the State of Washington, and the Court of Appeals of the State of New York, will not necessarily change the final result in an action at common law, such as the case at bar, where the Trial Court after hearing the evidence has dismissed the complaint for failure to establish a cause of action.

If the common law of the State of New York is modified by the Jones Act in such cases, the State Trial Courts must still function to determine whether or not a plaintiff has established or has failed to establish a cause of action.

In conclusion, we respectfully submit that the main question presented by the petition has become "moot" so far as future litigation is concerned and as applied to the very few pending cases, the facts and the law should be considered in the regular manner by the Trial Courts and the Courts of review before annoying this Court with such frivolous disputes. The pending cases must be considered in the light of the facts shown upon the trials.

**The petition should be denied.**

ERNIE ADAMSON,
Counsel for Respondent,
140 Nassau Street,
New York City.

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# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929.

No. [redacted] 32

ANNA URAVIC, as administratrix of the goods, chattels and credits which were of Anton Uravic, deceased,

*Petitioner,*

*against*

F. JARKA COMPANY, INC. and UNITED AMERICAN LINE, INC.,

*Respondents.*

## BRIEF FOR RESPONDENT JARKA.

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CHARLES WATSON RUSSELL, Printer

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# Supreme Court of the United States

OCTOBER TERM, 1929—No. 581.

ANNA URAVIC, as administratrix of the goods, chattels and credits which were of Anton Uravic, deceased,

Petitioner,

AGAINST

F. JARKA COMPANY, INC., and UNITED AMERICAN LINE, INC.,

Respondents.

## BRIEF FOR RESPONDENT JARKA.

### I.

### Jurisdiction.

Petitioner is proceeding on a writ of certiorari to the Supreme Court of the State of New York, pursuant to the provisions of the United States Code, Title 28, Section 344 (b).

### II.

### Resume of Facts.

Plaintiff's intestate was an experienced longshoreman, 45 years old (fol. 79). On July 13th, 1926, while in the employ of the respondent Jarka on the Steamship "Hamburg," conceded by petitioner to be flying the

German flag (fol. 70), he was struck by a large case that was being conveyed from the hold of Hatch No. 2 by means of a block and fall operated by a winch while he was standing alongside of the hatch coaming, sustaining injuries which resulted in his death. After a trial before the Court and a Jury, the complaint was dismissed upon the merits, upon the ground that petitioner failed to make out a cause of action, upon which an order was entered (fol. 19).

The judgment was affirmed by the Appellate Division of the Supreme Court, Second Department, without opinion. An appeal was then taken to the Court of Appeals of the State of New York which resulted in an affirmance of the judgment of the Courts below. The Court of Appeals wrote no opinion, but by memorandum said: "On the authority of *Resigno* v. *Jarka*, 248 N. Y. 225."

As to the defendant United American Line, Inc., the action was discontinued.

The action was tried under the common law. The plaintiff alleged and her witness testified that the accident occurred through the negligence of a fellow servant (fol. 175).

The plaintiff attempted to invoke the Jones Act, but the accident having happened on the Steamship "Hamburg" flying the German flag, the Court ruled that the Jones Act did not apply (*Resigno* v. *Jarka*, 248 N. Y. 225).

## III.

## Question Presented.

This case presents the question, whether the Jones Act (Act of June 5, 1920, 41 Stat. C, 250, pp. 988, 1007, Section 33), as amended by the Merchant Marine Act of June 5, 1920, applies to a longshoreman injured on a vessel flying the flag of Germany.

## POINT I.

**The Jones Act does not apply in the case at bar.**

It is conceded by the petitioner that the Steamship "Hamburg," upon which the plaintiff's intestate was injured, is a German ship flying the German flag (fol. 70).

This Court in *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, decided that longshoremen were seamen, and that an American seaman injured on an American vessel is entitled to the benefits of the Jones Act.

Section 33 of the Merchant Marine Act of 1920 was an amendment of Section 20 of the Seaman's Act of March 4, 1915. The title of that Act was "An Act to Promote the Welfare of American Seamen in the Merchant Marine of the United States," etc. An analysis of this Act will demonstrate the intent and purpose of Congress as expressed in the title, was carried out in the various sections of the Act and whenever any provision was to apply to foreign vessels it was so made to apply by express provisions to that effect.

> *Jackson* v. *Archimedes*, 275 U. S. 463;
> *American Banana Co.* v. *United Fruit Co.*, 213 U. S. 347, 357.

The Merchant Marine Act of 1920 was entitled: "An Act to provide for the Promotion and Maintenance of the American Merchant Marine, to Repeal Certain Emergency Legislation and to Provide for the Disposition, Regulation and Use of Property Acquired Thereunder, and for Other Purposes"; and the first section of that Act stated and declared a policy of pro-

mote the "United States Merchant Marine and provide for the growth of our domestic and foreign commerce."

The first twenty-nine sections of this Act, together with the last five sections (35-39) relate only to the establishment of the United States Shipping Board, the modification of various laws on American shipbuilding expansion, the acquiring of ships by the United States, and certain definitions not involved in the present question.

Section 30 relates to ship mortgage reform and to a definition of "vessels of the United States."

Section 31 provides for the payment of part of the wages earned "by seamen on board a vessel of the United States, at ports where the vessel arrives." It is specifically provided that this section shall apply to seamen on foreign vessels while in United States ports.

Section 32 makes it unlawful "to pay any seaman" advance salary. This section by specific provision is made applicable "to foreign vessels while in United States waters."

*Jackson* v. *Archimedes* (*supra*).

Section 33 is the provision referred to in the decision in the case of *International Stevedoring Co.* v. *Haverty*, and no provision is made in said section for its application either to foreign seamen or foreign ships in United States waters or elsewhere.

Section 34 removes a restriction on the right of the United States to impose discriminating customs on imports entering into the United States in foreign vessels and in vessels of the United States.

From the foregoing it is clear that, upon the application of universally accepted rules of statutory construction, the general language of Section 33 of the

Jones Act could apply only to American seamen on American ships.

In the case of the *Plamals* v. *Pinar del Rio*, 16 Fed. (2) 985, the benefits of the Jones Act were claimed on the ground that at the time of the accident the vessel (British) was in an American port (Philadelphia). Judge GODDARD refused to apply the Jones Act.

In the *Navarino*, 7 Fed. (2) 743, the seaman was injured on a British vessel lying in this port. Judge CAMPBELL said:

> "Under that law (Jones Act) American law follows American ships into foreign waters, but that does not apply to foreign ships in American waters."

In *The Seirstad*, 27 Fed. (2d) 982, the seaman was injured on a Norwegian vessel lying in this port. The Court held:

> "The question here presented has been passed upon in *Clark* v. *Montezuma Transportation Company*, *supra*, and *Resigno* v. *F. Jarka Co.*, 248 N. Y. 225, 162 N. E. 13, decided by the Court of Appeals of the State of New York, May 29, 1928, both of which are actions in personam, and as *Clark* v. *Montezuma Transportation Company*, *supra*, has been cited with approval by our own Circuit Court of Appeals, and its doctrine affirmed by the State Court of Appeals, I feel constrained to hold, that, while the Congress undoubtedly had power to give the remedy of the Jones Act to any seaman who is injured within the territory of our waters, irrespective of the nationality of the vessel on which the injury is received, the provisions of section 33 of the Jones Act are limited to seamen at work upon domestic vessels."

The application of Section 33 to seamen engaged on foreign vessels might be said to be within the discretion of Congress, had Congress chosen to apply it.

> *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375;
> *Jackson* v. *Archimedes* (*supra*).
> *Engel* v. *Davenport*, 271 U. S. 33;
> *Sandberg* v. *McDonald*, 248 U. S. 185;
> *Nogueira* v. *N. Y. N. H. & H. R. R. Co.*, No. 248, Oct. Term 1929 (Advance Opinions, No. 10, page 448).

It was not the intention of Congress to apply Section 33 to seamen injured upon a vessel in navigable waters registered under and flying the flag of a foreign country, and had Congress so intended, "a few words would have stated that intention, not leaving such an important regulation to be gathered from implication."

> *Sandberg* v. *McDonald*, 248 U. S. 185.

By the same reasoning, this Court said in the *Nogueira* case (*supra*) referring to the Longshoremen's and Harbor Workers' Compensation Act:

> "A special exception was added of the case of an employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia. The fact that a similar exception was left out of the Longshoremen's and Harbor Workers' Compensation Act and was inserted in the later statute works against, rather than for, the petitioner's contention."

In *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, this Court held:

> "The work upon which the plaintiff was engaged was a maritime service formerly rendered

> by the ship's crew. We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship."

If a longshoreman becomes a seaman because he does the work formerly done by members of the crew, there can be no doubt that under Section 33 of the Merchant Marine Act of 1920, like Section 20 of the Act of 1915, must be limited to seamen at work upon domestic vessels.

**Seamen Defined.**

Section 4612 Revised Statutes (U. S. Comp. St. 1901, p. 3120) which also appears in 3 Masons U. S. Code Ann. of 1926, Title 46, Chapter 18, Section 713, P. 3279, defines a seaman as follows:

> "In the construction of this chapter, every person having the command of any vessel belonging to any citizen of the United States shall be deemed to be the 'Master' thereof; and every person (apprentices excepted) who shall be employed or engaged to serve in any capacity on board the same shall be deemed and taken to be a 'Seaman'," * * *

So that it conclusively appears by the language of Section 33 of the Jones Act referring to "any seaman who shall suffer personal injury" that the words "Any seaman" mean, as is defined in Section 4612 of the Revised Statutes, "*seamen employed upon a vessel belonging to a citizen of the United States.*"

It is apparent that Congress did not intend to give a remedy for injuries suffered on the high seas aboard a foreign vessel flying a foreign flag.

*Jackson* v. *Archimedes* (*supra*);
*American Banana Co.* v. *United Fruit Co.* (*supra*).

Plaintiff's intestate having been employed upon a foreign vessel not belonging to a citizen of the United States, the Jones Act could not under any stretch of the imagination apply.

## POINT II.

**The petitioner fails to recognize the fact that the question of the relationship of employer and employee does not apply. It is the *locus in quo* that controls.**

There can be no dispute that Uravic at the time of his death was engaged in the performance of a maritime contract. That, however, does not determine the question as to the place where the tort was committed.

In *State Industrial Commission* v. *Nordenholt Corp.*, 259 U. S. 50, this Court said:

> "In torts the rule is different. There, jurisdiction depends solely upon the place where the tort was committed, * * * *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52."
>
> "The general doctrine that in contract matters admiralty jurisdiction depends upon the nature of the transaction, *and in tort matters upon the locality, has been so frequently asserted by this Court that it must now be treated as settled*" (italics ours).

The petitioner seems to find some relief in the dissenting opinion of Judge Crane in the *Resigno* case, in which the Judge states:

> "This class of specialized workers connected with maritime service is to be covered by the Act

> of 1920 and included within its provisions; not merely those few members of the class who happen for the time being to be working on American ships. Stevedores and longshoremen would receive very little benefit from this Act of Congress were it so limited."

This Court, however, does not concur with that reasoning. In the *Nogueira* case, *supra*, this Court said:

> "The fact that the same employee of a Railroad Company may have different rights at different times is a familiar consequence of the application of different laws, as, for example, when the employee of a Railroad Company is engaged at one time in intrastate commerce and at another time, even on the same day, in interstate commerce; and the application of Federal Laws where the employment falls within the Federal jurisdiction is manifestly a matter within the discretion of Congress. *Panama R. R. Co.* v. *Johnson* (*supra*)."

## POINT III.

**Petitioner erroneously states that the weight of authority is that Section 33 of the Merchant Marine Act of 1920 is applicable in the case of a longshoreman injured or killed on a foreign vessel lying in domestic waters.**

The following is a list of cases holding contrary to the petitioner's contention:

> *Plamals* v. *Pinar del Rio* (C. C. A.) 16 Fed. (2), 984, affirmed by this Court, 277 U. S. 151, but without passing on the question;
> *Rainey* v. *N. Y. & P. S. Co.*, 216 Fed. 449;

*The Navarino*, 7 Fed. (2) 743;
*The Falco* (C. C. A.) 20 Fed. (2) 362, 364;
*O'Reilly* v. *Cunard S. S. Co.*, by Judge Bondy (not reported), decided June 20, 1928.
*The Seirstad*, 27 Fed. (2) 982;
*Resigno* v. *Jarka*, 248 N. Y. 225;
*Clark* v. *Montezuma*, 217 A. D. 172, cited with approval by the Circuit Court of Appeals, 2nd District in *Plamals* v. *Pinar del Rio* (*supra*).

Conversely an American seaman, on an American ship is entitled to the benefits of American law, even if injured in foreign waters.

*Thompson Towing & Wrecking Ass'n* v. *McGregor*, 207 Fed. 209;
*Rainey* v. *N. Y. P. & S. Co.* (*supra*);
*Pallon Tulley T. Co.* v. *Turner*, 269 Fed 334;
*Panama Co.* v. *Johnson*, 289 Fed. 964;
*Wenzler* v. *Robin L. S. S. Co.*, 277 Fed. 812.

## FINAL POINT.

**The judgment of the Court of Appeals and the judgment entered on its remittitur by the Supreme Court, Kings County, should be affirmed.**

Dated, N. Y., October 24, 1930.

Respectfully submitted,

ERNIE ADAMSON,
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# Supreme Court of the United States

OCTOBER TERM, ~~1929—No. 581.~~ 1930 - No 32

ANNA URAVIC, as Administratrix of the goods, chattels and credits which were of ANTON URAVIC, deceased,

*Petitioner,*

*against*

F. JARKA COMPANY, INC. and UNITED AMERICAN LINES, INC.,

*Respondents.*

## MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*, ON BEHALF OF THE CUNARD STEAM SHIP COMPANY, LTD., AND BRIEF OF *AMICUS CURIAE*

GEORGE DEFOREST LORD,
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25 Broadway,
New York City.

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# Supreme Court of the United States

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*Petitioner,*

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F. JARKA COMPANY, INC. and UNITED AMERICAN LINES, INC.,

*Respondents.*

---

## MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

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MAY IT PLEASE THE COURT:

The undersigned, as counsel for The Cunard Steam Ship Company, Ltd., respectfully moves this Honorable Court for leave to file the accompanying brief in this case as *amicus curiae.*

GEORGE DEFOREST LORD,
*Counsel for The Cunard Steam Ship Company, Ltd., as Amicus Curiae,*
25 Broadway,
New York City.

# Supreme Court of the United States

OCTOBER TERM, 1929—No. 581.

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ANNA URAVIC, as Administratrix of the goods, chattels and credits which were of ANTON URAVIC, deceased,

*Petitioner,*

*against*

F. JARKA COMPANY, INC. and UNITED AMERICAN LINES, INC.,

*Respondents.*

---

## BRIEF OF *AMICUS CURIAE* ON BEHALF OF THE CUNARD STEAM SHIP COMPANY, LTD.

### I.

### Preliminary Statement.

The question involved in this proceeding, as to whether Section 33 of the Merchant Marine Act of 1920 applies to longshoremen injured in the course of their employment while working on foreign vessels, is similar to the question involved in three cases pending against The Cunard Steam Ship Company, Ltd., a foreign corporation. In each of such cases, the plaintiff, a longshoreman employed by the foreign steamship company, sued to recover damages for injuries received while working on a foreign vessel at the Port of New York. In two of such cases, *Harrington* v. *The Cunard Steam Ship Company, Ltd.* and *Buckley* v. *The Cunard Steam Ship Company, Ltd.*, which

were tried in the New York Supreme Court, the evidence showed that the injuries resulted from the negligence of fellow-servants, and, over the contentions of the plaintiffs that the cases were governed by Section 33, the complaints were dismissed. The third case, *O'Reilly* v. *The Cunard Steam Ship Company, Ltd.*, was tried before Judge Boxdy and a jury in the United States District Court for the Southern District of New York. It was submitted to the jury under a common law charge, the Court expressly declining to charge that the defendant would be liable for the negligence of fellow-servants under Section 33. The motion to set aside the verdict in favor of the defendant on the ground that the Court should have submitted the question of the negligence of fellow-servants as a ground of liability was denied. In each case an appeal is pending and undetermined.

The only distinction between the cases mentioned and the instant case is that in the former the longshoremen were directly employed by the foreign steamship company and in the latter the longshoreman was employed by an independent stevedore under a contract with the owners. The decision of this Court in the instant case will affect the liability of the defendant in the cases mentioned.

The position of *amicus curiae* is that Section 33 of the Merchant Marine Act does not apply to longshoremen injured while working on foreign vessels, whether they are employed directly by the owner of the vessel or by an independent stevedore.

It is not intended in this brief to rehearse the arguments already presented in the able opinion of the New York Court of Appeals in the case of *Resigno* v. *F. Jarka Co., Inc.*, 248 N. Y. 225, and in the brief for the respondent Jarka herein. The purpose of this brief is rather to pre-

sent additional arguments apparently not elsewhere considered.

## II.

## ARGUMENT.

**Section 33 of the Merchant Marine Act does not apply to an action brought by a longshoreman to recover for injuries received while working on a foreign vessel.**

The New York Court of Appeals based its decision in the instant case (reported at 252 N. Y. 530) upon its previous decision in the case of *Resigno* v. *Jarka, supra.* In the latter case the Court was unanimous in holding that Section 33 did not apply to members of the crews of foreign vessels, Judge CARDOZO saying at page 233:

> "The court is unanimous in its holding that seamen in the strict or proper sense are without the purview of the act when working upon foreign vessels. Whatever division there is among us has its origin in a supposed distinction between the remedy available to such seamen and that available to stevedores" (longshoremen).

Judge CRANE, although he held that Section 33 applied to a longshoreman employed by a stevedore on a foreign vessel, after referring to the provisions of other sections of the Act which make specific reference to foreign vessels, said at page 238:

> "Section 33 makes no such application, and it is natural to assume, therefore, that Congress did not intend to extend its provisions to foreign ships. The

> object of the act was to provide for the promotion and maintenance of the American Merchant Marine (*Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, p. 389), and I fail to see how the American Merchant Marine would be benefited by applying the act to the crews of foreign ships."

If Section 33 was intended to apply to foreign seamen, it was intended to apply to all of them. It is provided in the last sentence of the section that jurisdiction in such actions shall be under the court of the district "*in which the defendant employer resides or in which his principal office is located.*" It is common knowledge that foreign tramp steamers whose owners have neither residences nor offices in this country and whose business is transacted through ship's agents here, constantly come to American ports. The Act provides no remedy *in rem* against these vessels. *The Pinar Del Rio* (C. C. A. 2nd Cir.), 16 F. (2nd) 984. And if Congress had intended to apply the remedy to foreign seamen, it would have granted a remedy *in rem* where the owner did not reside or have an office in this country. Any other consideration results in the conclusion that Congress, by the venue provisions of the section, intended to exclude from the benefits of the Act that large class of seamen employed on foreign vessels whose owners do not reside or have offices here.

This Court, in *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50, decided that longshoremen are seamen within the meaning of the word as it is used in Section 33. In arriving at this conclusion, this Court, speaking through Mr. Justice Holmes, said at page 52:

> "It is true that for most purposes, as the word is commonly used, stevedores are not 'seamen'. But

> words are flexible. The work upon which the plaintiff was engaged was a maritime service formerly rendered by the ship's crew. *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 62. We cannot believe that Congress willingly would have allowed the protection to men engaged upon the same maritime duties to vary with the accident of their being employed by a stevedore rather than by the ship."

Longshoremen, then, are brought within the Statute because they are employed in maritime service *on ships*. Employment *by the vessel* is rejected as the test of the applicability of the statute, and employment *on the vessel* is substituted. The rule here announced makes the rights of the crew the criterion of the rights of the longshoremen.

If the protection afforded to seamen by this statute was not intended to "*vary with the accident of their being employed by a stevedore rather than by the ship*", and if the members of the crew of a foreign vessel are not within the statute, the statute could not have been intended to apply to longshoremen employed *on foreign vessels*, although employed *by American stevedores*. If the question "By whom was this seaman employed?" does not determine the applicability of the section, then the question "On what vessel was he employed?" must be controlling. It is not consistent to hold longshoremen to be so identified with the crew of a vessel as to be seamen within the Act and at the same time to hold that they are not so identified with the crew (if the vessel happens to be foreign) as to be without the Act. Any other construction would result in the existence of two classes of seamen on a foreign vessel in an American port: (1) the vessel's regular crew, the members of which are foreign seamen, and (2) the longshoremen temporarily engaged thereon, who are American seamen.

If our reasoning is correct, it would seem, therefore, that the Act cannot apply to longshoremen on foreign vessels unless it also applies to seamen on foreign vessels.

Section 33 was enacted as part of a statute providing "for the promotion and maintenance of the American Merchant Marine". Since we must consider this law as applying to longshoremen, it would seem to be more in consonance with the express purpose of the Act to hold that it applies only to longshoremen working on American vessels. This would induce longshoremen to seek such employment and would carry out the intent of the statute by making such employment one to be preferred by the longshoremen.

Mr. Justice O'Malley, writing for the Appellate Division of the New York Supreme Court in *Resigno* v. *Jarka Co., Inc.*, 221 App. Div. 214, said at page 219:

> "As already appears, the end sought to be achieved by the Jones Act was the promotion of an American merchant marine. To that end certain inducements were offered to shipowners and operators to take out American registry. It was just as important to induce seamen to work on vessels so registered for this purpose. Seamen so employed were also granted certain privileges. All other things being equal, a seaman would naturally prefer to be employed aboard an American vessel where in case of death compensation could be had. To hold, therefore, that Section 33 of the Jones Act does not apply to foreign seamen is not to subvert the plainly avowed purpose of the legislation, but is to carry out its evident general scheme."

We refer below to a number of cases wherein it has been held that the general words of a statute would be lim-

ited to the purposes of the Act as expressed in the title and other parts thereof.

In *Brown* v. *Duchesne*, 19 How. 183, the question arose whether a patent granted to a patentee under the laws of the United States for an improvement on the gaff of a vessel applied to a French vessel coming into the ports of the United States. The Court said at page 194:

> "The general words used in the clause of the patent laws granting the exclusive right to the patentee to use the improvement, taken by themselves, and literally construed, without regard to the object in view, would seem to sanction the claim of the plaintiff. But this mode of expounding a statute has never been adopted by any enlightened tribunal—because it is evident that in many cases it would defeat the object which the Legislature intended to accomplish. And it is well settled that, in interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute (or statutes on the same subject) and the objects and policy of the law, as indicated by its various provisions, and give to it such a construction as will carry into execution the will of the Legislature, as thus ascertained, according to its true intent and meaning."

In *Petition of Canadian Pacific Railway Co.*, 278 Fed. 180, the question was whether the term "no vessel of 100 gross tons or more", found in Section 13 of the Seamen's Act of March 4, 1915, applied to foreign vessels. The Court held that it did not and said at page 196:

> "The expression 'no vessel of 100 tons or more' is broad and comprehensive, and must be held to have relation only to the subject legislated upon, and be

> limited to the general context as expressed in the title of the act."

In *The Elswick Tower,* 241 Fed. 706, the question arose whether the words "the master of every vessel", contained in Section 4511 of the Revised Statutes, applied to the master of a foreign vessel. The Court held that it did not so apply and at page 710 quoted the language of Chief Justice MARSHALL in *United States* v. *Fisher,* 2 Cranch 358, 386, to the effect that

> "Where the mind labors to discover the design of the Legislature, it seizes everything from which aid can be derived; and in such case the title claims a degree of notice, and will have its due share of consideration."

In *Grant* v. *United States,* 58 Fed. 694, the question was whether Section 4601 of the Revised Statutes providing that "if any person shall harbor or secrete any seaman or mariner belonging to any ship or vessel" he should become subject to a penalty, applied to seamen on foreign vessels. The Court held that the section did not apply to them.

In *United States* v. *Kellum,* 7 Fed. 843, the action was for a violation of Section 4609 of the Revised Statutes providing that "if any person shall demand or receive, either directly or indirectly, from any seaman, or other person seeking employment as a seaman" any remuneration other than the fees authorized by the Act for providing him with employment, he should become subject to a penalty. The Court held that the Act did not apply to a case where remuneration is exacted for providing a seaman with employment in a foreign ship.

## III.

## CONCLUSION.

**It is respectfully submitted that Section 33 of the Merchant Marine Act does not apply to actions brought by longshoremen injured on foreign vessels whether in the direct employ of the vessel or of a contracting stevedore.**

Dated, New York, November 21, 1930.

Respectfully submitted,

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CPY6775

# SUPREME COURT OF THE UNITED STATES.

No. 32.—October Term, 1930.

| | |
|---|---|
| Anna Uravic, Administratrix of Anton Uravic, Petitioner, *vs.* F. Jarka Company and United American Line, Inc. | On Writ of Certiorari to the Supreme Court of the State of New York. |

[January 5, 1931.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an action that was brought in a Court of the State of New York and tried before a jury. At the close of the plaintiff's case the complaint was dismissed upon the merits and the decision was affirmed by the Court of Appeals, 252 N. Y. 530, on the authority of *Resigno* v. *F. Jarka Co.* [248 N. Y. 225]. A writ of certiorari was granted by this Court, 281 U. S. 708, because there is involved an important question as to the applicability of the Jones Act of 1915, c. 153, as amended by the Act of June 5, 1920, c. 250, § 33, 41 Stat. 988, 1007; U. S. Code, Title 46, § 688.

The action was for causing the death of the plaintiff's intestate, Anton Uravic, an American citizen, employed in work as a stevedore by the F. Jarka Company, a Delaware corporation. The suit against the other defendant named was discontinued. At the time of receiving the injury that caused his death, July 13, 1926, Uravic was helping to unload a vessel flying the German flag, in the harbor of New York. He was on the vessel at the time and we are to take it that he was hurt by the negligence of a fellow servant. That fact was no defence if the above-mentioned § 33 governed, because it is not one in the case of railway employees; Act of April 22, 1908, c. 149, § 1, 35 Stat. 65; U. S. Code, Tit. 45, § 51; and this § 33 giving an action at common law to the personal representative of any seaman suffering death in the course of his employment makes applicable all statutes of the

United States conferring or regulating such right of action in the case of railway employees. It is decided that stevedores come within the benefits conferred by § 33. *International Stevedoring Co.* v. *Haverty*, 272 U. S. 50. But the question is raised whether the statute applies to a stevedore working on a vessel that we assume to have been German, since she flew the German flag.

The language of the statute is general. The right is given to 'any seaman,' including, as we have said, stevedores. The jurisdiction and the authority of Congress to deal with the matter are unquestionable and unquestioned. *Cunard Steamship Co.* v. *Mellon*, 262 U. S. 100, 124, *et seq.* The conduct regulated is of universal concern. The rights of a citizen within the territorial limits of the country are more extensively determined by the scope of actions for torts than even by the law of crimes. There is strong reason for giving the same protection to the person of those who work in our harbors when they are working upon a German ship that they would receive when working upon an American ship in the next dock, as is especially obvious in the case of stevedores who may be employed in unloading vessels of half a dozen different flags in turn.

But it is said that stevedores only get their rights by a somewhat artificial extension of the word 'seaman' and it is argued that a seaman upon a German vessel clearly would not be given the rights claimed. It is said that the word is defined by R. S. § 4612, U. S. Code, Tit. 46, § 713. But that section merely provides that for the purposes of the chapter 'seaman' shall include persons who otherwise might be deemed not to be seamen. It is directed to extension not to restriction, as remarked by Judge Crane in *Resigno* v. *F. Jarka Co.*, 248 N. Y. 225, 242. Then it is argued that the grant of jurisdiction to the Court of the District in which the defendant employer resides or has his principal office without granting a proceeding *in rem* in the case of tramp steamers from abroad shows that seamen on a foreign vessel were not contemplated. But the question is not whether they were thought of for the purpose of inclusion but whether they were intentionally excluded from a description that on its face includes them. The express mention of them in sections as to the payment of wages does not help the respondent since that is a domestic matter of contract that unless mentioned might be left to the parties concerned. See *Jackson* v. *S.S. Archimedes*, 275 U. S. 463, 467.

Perhaps it would be a sufficient answer to the objections that while the § 33 is construed to give the rights of seamen to stevedores it does not say or mean that stevedores are to be regarded as seamen on the particular vessel upon which for the moment they happen to be at work. They simply are given the rights of seamen and as they are American workmen they have the rights of American seamen as well on German as on American ships.

But we may go further. Here we are dealing with the conduct of persons within the jurisdiction affecting the safety of other persons within it. If the rule is wise there is no reason why it should not be universal. Wise or not it is law and the question is why general words should not be generally applied. What would be the alternative? Hardly that the German law should be adopted. It always is the law of the United States that governs within the jurisdiction of the United States, even when for some special occasion this country adopts a foreign law as its own. *The Exchange,* 7 Cranch, 115, 136. *The Lottawanna,* 21 Wall. 558, 571, 572. *The Western Maid,* 257 U. S. 419, 432. *Cunard S.S. Co.* v. *Mellon,* 262 U. S. 100, 124. There hardly seems to be a reason why it should adopt a different rule for people subject to its authority because they are upon a private vessel registered abroad. They are not within the exception as to public armed vessels of a foreign sovereign, whatever its extent. *The Exchange,* 7 Cranch, 116, 143. Crimes committed upon such private vessels may be punished by the territorial jurisdiction. *Wilderhus' Case,* 120 U. S. 1. *Patterson* v. *Bark Eudora,* 190 U. S. 169, 177. We see no reason for limiting the liability for torts committed there when they go beyond the scope of discipline and private matters that do not interest the territorial power. But in these latter cases the local authority might abstain from interfering simply because it did not care to interfere. It would be extraordinary to apply German law to Americans momentarily on board of a private German ship in New York.

At the argument it was suggested that the case should be governed by the general maritime law. This means, as we have indicated, by the law of the United States, with the provisions of § 33 left out. It is assumed that by the law so qualified a master would not be liable to a servant for an injury caused by the negli-

gence of a fellow servant. But that doctrine is of relatively recent appearance in admiralty following the common law. *The City of Alexandria,* 17 Fed. Rep. 390. And, as we believe, it was introduced into the common law almost within the memory of men still living upon a principle of policy. Labatt, Master & Servant, §§ 471, *et seq.*, § 484; 2d Ed. §§ 1394, 1408. It would be somewhat hard to maintain that principle as still the policy of the law in this case after the doctrine has been abolished for railroad employees and seamen. See *International Stevedoring Co.* v. *Haverty,* 272 U. S. 50, 52.

If it should appear that by valid contract or special circumstances seamen on a foreign ship should not be protected by the statute it will be time enough to consider the exception when it is presented. But the purport of the words is plain and there is no reason to deny stevedores the benefit of them even if exceptions to the rule for seamen may be found upon peculiar facts.

*Judgment reversed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*